

INTERNATIONAL COURT OF JUSTICE

**MARITIME DISPUTE
(PERU v. CHILE)**

**MEMORIAL OF THE
GOVERNMENT OF PERU**

VOLUME I

20 MARCH 2009

“States should bear in mind:

(a) That legal disputes should as a general rule be referred by the parties to the International Court of Justice, in accordance with the provisions of the Statute of the Court.

...

Recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered an unfriendly act between States.”

Manila Declaration on the Peaceful Settlement of International Disputes.
Approved by the United Nations General Assembly. Resolution No. 37/10 of 15 November 1982.

TABLE OF CONTENTS

INTRODUCTION	1
I. Jurisdiction	2
II. The Maritime Dispute	4
A. A BRIEF HISTORY	4
B. PERU-CHILE AND THE MODERN LAW OF THE SEA	5
C. PERU'S PROPOSALS TO REACH AN AGREEMENT ON MARITIME DELIMITATION WITH CHILE	7
D. THE CHILEAN ALLEGATIONS	10
E. SUMMARY	13
III. Outline of this Memorial	14
CHAPTER I: HISTORICAL BACKGROUND	19
I. Introduction	19
II. Colonial Times and Early Republican History	20
III. The War of the Pacific (1879-1883)	25
IV. The 1883 Treaty of Ancón and the Plebiscite on Tacna and Arica	28
V. The 1929 Treaty of Lima	33
VI. Peru-Chile Expanding Relations	36
CHAPTER II: THE GEOGRAPHICAL SETTING	39
I. The General Configuration of the Peruvian and Chilean Coasts	39
A. PERU'S COAST	40
B. CHILE'S COAST	53

II. The Characteristics of the Maritime Area and Its Resources	57
A. THE CHARACTERISTICS OF THE SEA-BED AND THE SUBSOIL	57
B. THE FISHING POTENTIAL OF THE AREA	58
CHAPTER III: PERU'S MARITIME ENTITLEMENTS UNDER INTERNATIONAL LAW	61
I. Applicable Principles	62
II. Peru's Maritime Entitlements under General Principles of the Law of the Sea	64
III. Chile Has Recognised as a Matter of Principle Peru's Maritime Entitlements to a Distance of 200 Nautical Miles from Its Coast	73
CHAPTER IV: LACK OF AN AGREEMENT ON MARITIME DELIMITATION	83
I. Introduction	83
II. The Maritime Claims	87
A. PHASE 1: MARITIME CLAIMS PRIOR TO 1945	88
1. <i>Peru's Maritime Claims</i>	88
2. <i>Claims of Other States</i>	91
B. PHASE 2: MARITIME CLAIMS 1945-1980	95
1. <i>The Background to the Claims of 1947</i>	95
2. <i>The Truman Proclamations</i>	99
3. <i>The Mexican and Argentinean Claims of 1945-1946</i>	104
4. <i>South-East Pacific Fisheries in the 1940s</i>	105
5. <i>Chile's 1947 Claim</i>	107
6. <i>Peru's 1947 Claim</i>	111
7. <i>The 1952 Declaration of Santiago</i>	120
8. <i>The Reaction to the 1952 Declaration of Santiago</i>	133
9. <i>The Second Conference on Exploitation and Conservation of the Marine Resources of the South Pacific, 1954</i>	136
10. <i>The 1954 Complementary Convention</i>	137

11. <i>The 1954 Agreement on a Special Zone</i>	139
12. <i>Developments between 1954 and 1968</i>	145
13. <i>The Coastal Lights</i>	152
C. PHASE 3: 1980 ONWARDS	158
III. Concluding Observations	164
CHAPTER V: THE MAP EVIDENCE CONFIRMS THAT THERE IS NO PRE-EXISTING MARITIME DELIMITATION BETWEEN THE PARTIES	171
I. Introduction	171
II. Contrary to Chile's Own Practice, There Was No Delimitation Map Accompanying the 1952 or 1954 Instruments	172
III. The Cartography of the Parties	174
A. PERU'S MAPS	177
B. CHILE'S MAPS	178
CHAPTER VI: THE PRINCIPLES AND RULES OF INTERNATIONAL LAW GOVERNING MARITIME DELIMITATION AND THEIR APPLICATION IN THIS CASE	195
I. Introduction	195
II. The Principles and Rules of Maritime Delimitation	196
III. The Relevant Coasts of the Parties and the Relevant Area	202
A. THE RELEVANT COASTS	202
B. THE RELEVANT AREA	207
IV. The Starting-Point for the Delimitation	208
V. Construction of the Provisional Equidistance Line	222
VI. The Absence of Any Special Circumstances Calling for an Adjustment of the Equidistance Line	224
VII. The Equidistance Line Satisfies the Test of Proportionality	235
VIII. Conclusions	237

CHAPTER VII: PERU’S MARITIME ENTITLEMENTS OFF ITS SOUTHERN COAST – THE ‘OUTER TRIANGLE’	243
I. Introduction	243
II. The Chilean Claimed Rights in the Area	248
III. The Chilean Claim Is Incompatible with Peru’s Exclusive Sovereign Rights Up to a Distance of 200 Nautical Miles Off Its Southern Coast	257
A. CHILE’S CLAIMED “PRESENTIAL SEA” ENCROACHES UPON PERU’S MARITIME DOMAIN	257
B. THE <i>IPSO FACTO</i> SOVEREIGN RIGHTS OF PERU IN THE AREA	260
 CHAPTER VIII: SUMMARY	 271
 SUBMISSIONS	 275
 LIST OF MAPS AND FIGURES IN VOLUME I	
 Figure 1.1 First Official Map of Peru: Prepared in 1864 by order of the Minister of Foreign Affairs Mariano Felipe Paz- Soldán. <i>Mapa del Perú</i>	 23
Figure 1.2 Chile’s Territorial Acquisitions Resulting from the War of the Pacific	29
Figure 2.1 General Configuration of the Peruvian and Chilean Coasts	41
Figure 2.2 Ecuadorian Islands Near Peru’s Northern Land Boundary & Lack of Peruvian Islands Near Peru’s Southern Land Boundary	45
Figure 2.3 Peru’s Coastline and Straight Baselines	49
Figure 2.4 Map Showing the Outer Limit – Southern Sector of Peru’s Maritime Domain. <i>Carta del Límite Exterior – Sector Sur – del Dominio Marítimo del Perú</i>	51
Figure 2.5 Chile’s Coastline and Straight Baselines	55
Figure 4.1 200 Mile Limit Using the ‘Arcs of Circles’ Approach	121
Figure 4.3 The Coastal Lights Established by the 1969 Joint Commission	155
Figure 4.4 Chile’s Supreme Decree No. 210	165

Figure 5.1	Map No. 1 Annexed to the Chile / Argentina Maritime Delimitation Treaty of 1984. <i>Carta N° I</i>	175
Figure 5.8	Map Published by Instituto Geográfico Militar de Chile, 1941	179
Figure 5.19	Arica 1973, Chilean Nautical Chart No. 101	183
Figure 5.20	Rada de Arica Chilean Nautical Chart No. 100, May 1979. <i>Chile, Rada de Arica a Bahía Mejillones del Sur</i>	185
Figure 5.22	Chile-Argentina Maritime Boundary Agreement: 1984. 1986 Chilean Nautical Chart No. 1300. <i>Chile, Boca Oriental del Estrecho de Magallanes a Islas Diego Ramírez</i>	187
Figure 5.23	Rada y Puerto Arica 1989, Chilean Nautical Chart No. 101. <i>Chile, Rada y Puerto Arica</i>	189
Figure 5.24	Rada de Arica 1994, Chilean Nautical Chart No. 1000. <i>Chile, Rada de Arica a Bahía Mejillones del Sur</i>	191
Figure 6.1	Bathymetry of the Relevant Area	205
Figure 6.2	The Relevant Coasts	209
Figure 6.3	The Relevant Area	211
Figure 6.4	Initial Sector of the Land Boundary as Defined by the 1929 Treaty	217
Figure 6.5	‘Point Concordia’ vs. ‘Marker Concordia’	219
Figure 6.6	The Equidistance Methodology	225
Figure 6.7	The Bi-Sector Methodology	227
Figure 6.8	Inequitable Cutoff Effect Caused by Chile’s Delimitation Position & Balanced Cutoff Effect of Peru’s Delimitation Claim	233
Figure 6.9	Proportionality Test Applied to The Equidistance Methodology	239
Figure 6.10	Proportionality Test Applied to Chile’s Delimitation Claim	241
Figure 7.1	Chile’s Claim to Parts of Peru’s Maritime Domain	245
Figure 7.2	Maritime Areas that Pertain to Chile According to the Chilean Navy	253
Figure 7.3	Chile’s Mar Presencial, 1992. Chilean Nautical Chart No. 22. <i>Chile, Mar Presencial, Formas del Relieve Submarino</i>	261
Figure 7.5	Limited Extent of the Continental Shelf in the Relevant Area	265

LIST OF ANNEXES (VOLUMES II AND III)	277
LIST OF MAPS AND FIGURES (VOLUME IV)	285
LIST OF DOCUMENTS DEPOSITED WITH THE REGISTRY	289

INTRODUCTION

1. This case was brought before the International Court of Justice on 16 January 2008 by means of an Application filed by the Republic of Peru (hereinafter “Peru”) against the Republic of Chile (hereinafter “Chile”). In its Application to the Court, Peru requested it –

“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.”¹

2. The Court, by means of the Order dated 31 March 2008, fixed 20 March 2009 as the time limit for submitting the Memorial of the Republic of Peru in the *Case Concerning Maritime Dispute (Peru v. Chile)*. This Memorial is filed pursuant to that Order.

¹ Application instituting proceedings of the Republic of Peru, filed before the I.C.J. on 16 January 2008, pp. 4-5.

I. Jurisdiction

3. In its Application Peru has indicated that:

“The jurisdiction of the Court in this case is based on Article XXXI of the American Treaty on Pacific Settlement (Pact of Bogotá) of 30 April 1948 ...”².

This Article reads as follows:

“In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:

- a) The interpretation of a treaty;
- b) Any question of international law;
- c) The existence of any fact which, if established, would constitute the breach of an international obligation;
- d) The nature or extent of the reparation to be made for the breach of an international obligation.”³

4. Both Peru and Chile are Parties to the Pact of Bogotá. Peru ratified it on 28 February 1967 and Chile did so on 21 August 1967. No reservation in force at the present date has been made by either Party under the Pact. Peru notified the Secretariat General of the Organization of American States of the withdrawal of its initial reservations on 27 February 2006⁴.

² *Ibid.*, p. 2.

³ Annex 46.

⁴ See Signatories and Ratifications on the Pact of Bogotá <<http://www.oas.org/juridico/english/sigs/a-42.html>> accessed 1 December 2008.

5. There can be no doubt that Article XXXI of the Pact of Bogotá is a sufficient basis of jurisdiction in case of a legal dispute between two States Parties. The question was decided by the Court on the occasion of the case filed by Nicaragua against Honduras relating to *Border and Transborder Armed Actions*.
6. In its Judgment of 20 December 1988, on *Jurisdiction and Admissibility* in that case, the Court made clear that Article XXXI of the Pact –

“is an autonomous commitment, independent of any other which the parties may have undertaken or may undertake by depositing with the United Nations Secretary-General a declaration of acceptance of compulsory jurisdiction under Article 36, paragraphs 2 and 4, of the Statute. Not only does Article XXXI not require any such declaration, but also when such a declaration is made, it has no effect on the commitment resulting from that Article.”⁵

7. The “jurisdictional system of the Pact of Bogotá” was considered again by the Court in the case concerning the *Territorial and Maritime Dispute* between Nicaragua and Colombia⁶. In its Judgment of 13 December 2007, the Court stressed “[t]he importance attached to the pacific settlement of disputes within the inter-American system”⁷ and reiterated its previous interpretation⁸. In that case the International Court of Justice lacked jurisdiction only in respect of one part of the Nicaraguan claims since that part of the dispute had been settled by a treaty “valid and in force on the date of the conclusion of the Pact of Bogotá in 1948, the date by reference to which the Court must decide

⁵ *Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 85, para. 36; see also p. 88, para. 41. In the *Case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea* the jurisdiction of the Court was also based on Article XXXI of the Pact of Bogotá (see the I.C.J. Judgment of 8 October 2007, para. 1).

⁶ *Territorial and Maritime Dispute (Nicaragua v. Colombia), Preliminary Objections, I.C.J. Judgment of 13 December 2007*, paras. 53-59.

⁷ *Ibid.*, para. 54.

⁸ *Ibid.*, para. 134.

on the applicability of the provisions of Article VI of the Pact of Bogotá setting out an exception to the Court’s jurisdiction under Article XXXI thereof”⁹. Such a question does not arise in the present case, where the issue of the extent and limits of the respective maritime zones of the Parties are at stake and were not settled in 1948.

8. There can therefore be no question in the present case that the Court’s jurisdiction is established under Article XXXI of the Pact of Bogotá.

II. The Maritime Dispute

A. A BRIEF HISTORY

9. Peru and Chile became independent without being neighbouring States. Peru gained its independence from Spain in 1821 and Chile did so in 1818. Peru did not have a common border with Chile owing to the fact that lying between the two countries was the Colonial Spanish territory of Charcas and, as from 1825, the new Republic of Bolivia.
10. In 1879 Chile declared war against Peru and Bolivia, in what is known historically as the War of the Pacific. By the Treaty of Peace and Friendship signed by Chile and Peru in 1883 (hereinafter “the 1883 Treaty of Ancón”), Peru had to cede to Chile in perpetuity the coastal province of Tarapacá and the possession for ten years of the Peruvian provinces of Tacna and Arica¹⁰. Further, by a treaty of 1904, Bolivia ceded to Chile all the territory of its coastal province of Antofagasta, thus losing its maritime status. That is how Peru and Chile came to be neighbouring States after, and as a result of, the War of the Pacific.

⁹ *Ibid.*, para. 81; Article VI of the Pact of Bogotá reads: “The aforesaid procedures, furthermore, may not be applied to matters already settled by arrangement between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty.” Annex 46.

¹⁰ See paras. 1.20-1.31 below.

11. It was only after 45 years, in 1929, that under the Treaty for the Settlement of the Dispute regarding Tacna and Arica, and its Additional Protocol (hereinafter “the 1929 Treaty of Lima”)¹¹ the situation was solved with the partition of the provinces, so that Tacna was reincorporated to Peru and Arica (a coastal province to the south of Tacna which possesses the only natural harbour in the area) was ceded in perpetuity to Chile. Other important provisions of this Treaty, regarding Peruvian rights and servitudes in Arica, were implemented by Chile 70 years later, in 1999¹². None of the treaties over these coastal provinces mentioned the adjacent sea or maritime limits.

B. PERU-CHILE AND THE MODERN LAW OF THE SEA

12. Despite important and delicate territorial questions which remained unresolved, in 1952 Peru and Chile, together with Ecuador, embarked on a process of maritime co-operation with a view to protecting the adjacent sea from the predatory activities of foreign fleets. This joint action was preceded by the unilateral claims made in 1947 by Chile and by Peru in relation to new maritime areas¹³, which formed part of the foundations of the modern Law of the Sea. The Declaration on The Maritime Zone of 18 August 1952 (hereinafter “the 1952 Declaration of Santiago”), established the guidelines for a common maritime policy of the signatory States, stating *inter alia*:

“II) In the light of these circumstances, the Governments of Chile, Ecuador and Peru proclaim as a norm of their international maritime policy that they each possess exclusive sovereignty and jurisdiction over the sea along the coasts of their respective countries to a minimum distance of 200 nautical miles from these coasts.

¹¹ The 1929 Treaty of Lima is Annex 4 to the Application. It is joined anew for the convenience of the Court as Annex 45.

¹² The Execution Act concerning Article 5 of the 1929 Treaty of Lima was signed by the two countries in 1999. Annex 60.

¹³ Annexes 27 and 6, respectively.

III) The exclusive jurisdiction and sovereignty over this maritime zone shall also encompass exclusive sovereignty and jurisdiction over the seabed and the subsoil thereof.”¹⁴

Spanish text reads as follows:

“II) Como consecuencia de estos hechos, los Gobiernos de Chile, Ecuador y Perú proclaman como norma de su política internacional marítima, la soberanía y jurisdicción exclusivas que a cada uno de ellos corresponde sobre el mar que baña las costas de sus respectivos países, hasta una distancia mínima de 200 millas marinas desde las referidas costas.

III) La jurisdicción y soberanía exclusivas sobre la zona marítima indicada incluye también la soberanía y jurisdicción exclusivas sobre el suelo y subsuelo que a ella corresponde.”

13. The 1952 Declaration of Santiago was the basis of the position adopted by the signatory States¹⁵ at the Third United Nations Conference on the Law of the Sea (hereinafter “UNCLOS III”). Thus, in a joint declaration dated 28 April 1982, they stated the following:

“The delegations of Chile, Colombia, Ecuador and Peru wish to point out that the universal recognition of the rights of sovereignty and jurisdiction of the coastal State within the 200-mile limit provided for in the draft Convention is a fundamental achievement of the countries members of the Permanent Commission of the South Pacific, in accordance with the basic objectives stated in the Santiago Declaration of 1952.

Those objectives have been compiled and developed by the Convention on the Law of the Sea, which incorporates into international law principles and institutions which are essential for a more appropriate and fairer exploitation of the resources contained in coastal waters, to the benefit of the over-all

¹⁴ Annex 47.

¹⁵ Colombia had joined the 1952 Declaration of Santiago in 1979.

development of the peoples concerned, on the basis of the duty and the right to protect those resources and to conserve and guarantee that natural wealth for those peoples.”¹⁶

14. Neither the 1952 Declaration of Santiago, nor the various implementing agreements signed by the Parties relate to maritime delimitation. Thus, the negotiation of a maritime delimitation treaty – which would divide the large area of sea claimed by means of the 1952 Declaration of Santiago and whose main outlines were incorporated in the 1982 United Nations Convention on the Law of the Sea (hereinafter “the 1982 Convention on the Law of the Sea”) – remained outstanding¹⁷.
15. On 27 August 1980, after evaluating the result of the negotiations at UNCLOS III, Peru stated at that Conference its position on the maritime delimitation of States with adjacent or opposite coasts. The Head of the Peruvian delegation stated:

“Where a specific agreement on the delimitation of the territorial sea, exclusive economic zone and continental shelf between States with opposite or adjacent coasts did not exist or where there were no special circumstances or historic rights recognized by the parties, the median line should as a general rule be used, as suggested in the second revision, since it was the most likely method of achieving an equitable solution.”¹⁸

C. PERU’S PROPOSALS TO REACH AN AGREEMENT ON MARITIME DELIMITATION WITH CHILE

16. After the 1982 Convention on the Law of the Sea had been adopted, the Peruvian Government carried out its first relevant act vis-à-vis the Chilean Government in relation to maritime delimitation. The diplomatic Memorandum annexed to the Note of the Embassy of Peru dated 23 May 1986, summarized

¹⁶ Annex 108.

¹⁷ See paras. 4.80-4.81 below.

¹⁸ Annex 107.

the presentation made by a Peruvian envoy to the Chilean Minister of Foreign Affairs. This Memorandum said:

“One of the cases that merits immediate attention is the formal and definitive delimitation of the marine spaces, which complement the geographical vicinity of Peru and Chile and have served as scenario of a long and fruitful joint action.”¹⁹

Spanish text reads as follows:

“Uno de los casos que merece una inmediata atención, se refiere a la delimitación formal y definitiva de los espacios marinos, que complementan la vecindad geográfica entre el Perú y Chile, y que han servido de escenario a una larga y fructífera acción común.”

17. This meeting between the Peruvian envoy and the Chilean Minister of Foreign Affairs was dealt with by the Chilean Government in an official communiqué dated 13 June 1986, which stated:

“During this visit, Ambassador Bákula expressed the interest of the Peruvian Government to start future conversations between the two countries on their points of view regarding maritime delimitation.

The Minister of Foreign Affairs, taking into consideration the good relations existing between both countries, took note of the above stating that studies on this matter shall be carried out in due time.”²⁰

Spanish text reads as follows:

“Durante esta visita, el Embajador Bákula dio a conocer el interés del Gobierno peruano para iniciar en el futuro

¹⁹ Annex 76.

²⁰ Annex 109.

conversaciones entre ambos países acerca de sus puntos de vista referentes a la delimitación marítima.

El Ministro de Relaciones Exteriores, teniendo en consideración las buenas relaciones existentes entre ambos países, tomó nota de lo anterior manifestando que oportunamente se harán estudio [*sic*] sobre el particular.”

18. Several events occupied Peru’s attention during the decades that followed the adoption of the 1982 Convention on the Law of the Sea. Among others, Peru was concerned with the implementation of the 1929 Treaty of Lima which provided rights and servitudes in Arica in favour of Peru. In 1992 and 1993 Peru and Chile carried out intensive, but unsuccessful negotiations on this matter.
19. In 1995 an armed conflict took place between Peru and Ecuador. With the co-operation of Argentina, Brazil, Chile and the United States – the four guarantor countries of the 1942 Rio de Janeiro Protocol between Peru and Ecuador – both countries focussed their efforts on reaching a final solution to their differences regarding the demarcation of the land boundary. This matter was settled by means of the Presidential Act of Brasilia in 1998. Subsequently, in 1999, Peru resumed negotiations with Chile regarding the rights and servitudes in Arica provided in favour of Peru by the 1929 Treaty of Lima. This was finally achieved by means of the Execution Act of 1999 signed by Peru and Chile²¹ 70 years after the signature of the Treaty of Lima.
20. Meanwhile, in 1997 Chile ratified the 1982 Convention on the Law of the Sea, stating that it did not accept the application of the procedures provided for in Part XV –Settlement of Disputes –, Section 2, to disputes concerning sea boundary delimitation²².

²¹ Annex 60.

²² Chile made the following declaration: “In accordance with article 298 of the Convention, Chile declares that it does not accept any of the procedures provided for in part XV, section 2, with respect to the disputes referred to in article 298, paragraph 1(a), (b) and (c) of the Convention.” United Nations Division for Ocean Affairs and the Law of the Sea, *Law of the Sea Bulletin* No. 35, p. 11.

D. THE CHILEAN ALLEGATIONS

21. Despite the fact that Chile had acknowledged in 1986 that the maritime delimitation with Peru was a matter which remained to be examined, in 2000 it lodged with the Secretary-General of the United Nations a chart purporting to depict the baselines in the northern sector of its coast as well as the outer limits of the territorial sea, the contiguous zone, the exclusive economic zone (hereinafter “EEZ”) and the continental shelf. On that chart Chile unilaterally depicted the parallel 18°21'00" S WGS84 as the international maritime limit with Peru²³. Peru protested and formally objected to the chart. In a document addressed to and circulated by the Secretary-General of the United Nations, Peru complained about Chile’s behaviour and emphasized the fact that there is no maritime boundary agreement between Peru and Chile. It stated clearly that:

“To date Peru and Chile have not concluded a specific maritime delimitation treaty pursuant to the relevant rules of international law. The mention of parallel 18°21'00" as the maritime boundary between the two States is, therefore, without legal basis.”²⁴

22. It should be stressed that Peru has constantly reiterated its unwavering position that it does not accept the parallel of latitude as the international maritime boundary: Chile’s allegation that it is an international boundary is without any foundation. At the same time, Peru has decided to continue with its policy of caution and moderation in the handling of the dispute concerning the maritime boundary, in order not to jeopardize compliance with the purposes and principles of the Charter of the United Nations, and particularly Article 2.3 thereof. It was also in accordance with these purposes and principles that Peru decided to bring this case before the International Court of Justice.

²³ See **Figure 2.6** in Vol. IV. See also the list of geographical co-ordinates deposited by Chile with the Secretary-General of the United Nations, in Annex 110.

²⁴ Note No. 7-1-SG/005 of 9 January 2001, from the Permanent Mission of Peru to the Secretary-General of the United Nations. Statement by the Government of Peru concerning parallel 18°21'00", referred to by the Government of Chile as the maritime boundary between Chile and Peru. Annex 78.

23. Peru decided to approach the Court after a long process during which the dispute came to a head and in view of the refusal of Chile to negotiate a maritime delimitation treaty. Thus, following the initial proposal made by Peru in 1986, on 19 July 2004 Peru's Minister of Foreign Affairs stated in a formal diplomatic Note addressed to Chile:

“Peru considers that the stability of friendly and cooperative bilateral relations with Chile, as well as the promotion of shared interests in all aspects of the bilateral relationship will find a larger dynamism to the extent that an agreement on the juridical dispute could be reached, whose solution is still pending.

These considerations, of utmost importance in our bilateral relation, lead me to formally submit a proposal, to Your Excellency, for the commencement, as soon as possible, of bilateral negotiations to solve this dispute. I also suggest that these negotiations start within the next 60 days. They could be carried out in the city of Lima, in the city of Santiago de Chile or in the city chosen by mutual agreement. The purpose of these negotiations should be the establishment of the maritime limit between Peru and Chile, according to the provisions of International Law, through a specific treaty on this issue.”²⁵

Spanish text reads as follows:

“El Perú estima que la estabilidad de las relaciones bilaterales, de amistad y cooperación con Chile, así como la promoción de intereses compartidos en todos los ámbitos de la relación bilateral encontrarán un mayor dinamismo en la medida en que se pueda obtener un acuerdo sobre esta controversia jurídica cuya solución está aún pendiente.

Estas consideraciones, de la mayor importancia en la relación bilateral, me llevan a proponer formalmente a Vuestra Excelencia el inicio, a la brevedad posible, de negociaciones bilaterales para resolver esta controversia. Propongo, asimismo, que estas negociaciones comiencen dentro de los próximos sesenta días.

²⁵ Annex 79.

Las mismas podrían llevarse a cabo en la ciudad de Lima, en la ciudad de Santiago de Chile o en la ciudad que se escoja de común acuerdo. La finalidad de estas negociaciones deberá ser el establecimiento del límite marítimo entre el Perú y Chile de conformidad con las normas del Derecho Internacional, mediante un tratado específico sobre esta materia.”

24. By means of a Note dated 10 September 2004, Chile rejected this proposal, thus closing definitively the door to the possibility of negotiating a maritime delimitation treaty with Peru²⁶.
25. Very shortly afterwards there was a formal acknowledgment by Chile of the existence of the bilateral controversy concerning maritime delimitation. In the Joint Communiqué signed by the Ministers of Foreign Affairs of Peru and Chile in Rio de Janeiro, on 4 November 2004, it was stated that:

“We, the Ministers of Foreign Affairs have reiterated that the subject of maritime delimitation between both countries, in respect of which we have different positions, is a question of juridical nature and it strictly constitutes a bilateral issue that must not interfere in the positive development of the relationship between Peru and Chile.”²⁷

Spanish text reads as follows:

“Los Cancilleres hemos reafirmado que el tema de la delimitación marítima entre ambos países, respecto del cual tenemos posiciones distintas, es una cuestión de naturaleza jurídica y que constituye estrictamente un asunto bilateral que no debe interferir en el desarrollo positivo de la relación entre Perú y Chile”

²⁶ Annex 80.

²⁷ Annex 113.

E. SUMMARY

26. To summarize, the guiding principle of the joint international maritime policy, as it was agreed and explained in the 1952 Declaration of Santiago, is that each State which is a Party to the Declaration has rights over the adjacent sea out to a distance of at least 200 nautical miles measured from its coastline. Chile's position denies Peru that right, and the resulting situation is totally inequitable.
27. Peru has not ceded to Chile its sovereignty or its sovereign rights and jurisdiction over maritime areas generated by Peru's coast; nor has any maritime area belonging to Peru been transferred to the high seas. It is absurd to think that Peru could have given up tenths of thousands of square kilometres of sea in favour of a neighbouring country. It is equally absurd to consider that Peru has relinquished its sovereign rights to areas that lie within 200 miles from its shores (approximately 30,000 square kilometres), and which are therefore part of Peru's maritime domain. However, Chile has recently deemed these areas to be high seas and part of its "Presential Sea", a concept unilaterally devised by Chile.²⁸
28. In the course of the present case, Peru will demonstrate that it has not concluded with Chile any agreement establishing international maritime limits, nor has it given up, expressly or tacitly, the maritime zones which belong to it under international law.
29. Faithful observance of treaties, compliance with international law, peaceful settlement of disputes and fulfilment of the purposes and principles of the United Nations Charter are the foundations of the Peruvian foreign policy.

²⁸ See para. 7.8 *ff.* below.

III. Outline of this Memorial

30. The present Memorial contains the following chapters:

(a) Chapter I: Historical Background.

This chapter explains how the agreed land boundary between Peru and Chile – including the point at which the land boundary meets the sea – was fixed. It begins by explaining the relations between Peru and Chile since Colonial times and their early Republican life. It also examines the consequences of the War of the Pacific (1879-1883) as a result of which Peru lost vast and rich territories and became a neighbour of Chile, as well as the Chilean failure to organize the agreed Plebiscite on the final legal status of the Peruvian provinces of Tacna and Arica. It then describes the events that led to the 1929 Treaty of Lima which fixed the land boundary between the two countries and established rights and servitudes for Peru, the implementation of which took 70 years. It also records the fruitful co-operation started by Peru and Chile in the 1950s, together with Ecuador and later also with Colombia, for extending their maritime sovereign rights out to a distance of at least 200 nautical miles off their coasts, and their contribution to the modern Law of the Sea. The chapter finally underlines the expanding relations between Peru and Chile and gives the context of Peru's Application to the International Court of Justice in 2008 as a means of solving the dispute without affecting the development of the relationships between both countries.

(b) Chapter II: The Geographical Setting.

This chapter addresses the geographical setting within which the delimitation is to be effected by the Court. It also describes the general configuration of the Peruvian and Chilean coasts, including both countries' baselines. Finally, it discusses the characteristics of the area to be delimited, the natural resources therein, and the crucial importance of access to those resources for the well-being of Peru's southern provinces and of the country as a whole.

(c) Chapter III: Peru's Maritime Entitlements under International Law.

This chapter discusses the sources of law applicable to the present dispute under Article 38 of the Statute of the International Court of Justice, with reference to the delimitation of the continental shelf and the column of water. It demonstrates that under the general principles of the contemporary Law of the Sea Peru is entitled to an exclusive maritime zone extending to a distance of 200 nautical miles from its baselines. Further, it explains that Chile has recognized these Peruvian maritime entitlements as a matter of principle.

(d) Chapter IV: Lack of an Agreement on Maritime Delimitation.

This chapter adopts a chronological approach, explaining developments that fall into three natural periods: (i) up to 1945, before the expanded claims made in and following the Truman Proclamations in 1945; (ii) from 1945 up to 1980, during which time the 200-nautical-mile claims made by Peru, Chile and other States remained contentious and had not gained general acceptance among the traditional "maritime" States; and (iii) after 1980, when developments at the UNCLOS III indicated that the 200-nautical-mile zone was practically certain to be a central element of the new legal regime then being negotiated at the Conference. This chapter also describes the dealings by the Parties insofar as they are relevant to the question of the maritime boundary and explains how all those dealings were reactions to the pressure of immediate events, foremost among which was the refusal of certain States whose vessels fished off the coasts of the American South Pacific States to recognize the validity of the 200-nautical-mile claims made by those States. It further discusses the key characteristic of those dealings, which is the defence of an American South Pacific maritime zone against opposition and violations by third States. The chapter explains the provisional nature of this maritime zone, as well as the intention of the Parties to regulate certain specific functions in the vicinity of the coast and the absence of any intention to divide up areas of ocean space. The chapter concludes that in the absence of a maritime agreement between Peru and Chile their maritime boundary remains to be determined by the Court.

(e) Chapter V: The Map Evidence Confirms that There Is No Pre-Existing Maritime Delimitation between the Parties.

This chapter shows that the official cartography of Peru and Chile confirms that there is no pre-existing maritime delimitation between them. It discusses the fact that, contrary to normal State practice and to Chile's own delimitation practice, no map has ever been issued jointly by the Parties depicting a maritime boundary between them. It also demonstrates that the official cartography of both Parties shows that Peru has never published any official map indicating that a maritime boundary exists between itself and Chile, and that it was only in 1992 that Chile began to change its cartographic practice by publishing a map relating to its "Presential Sea" claim which purported to show a maritime boundary between Chile and Peru.

(f) Chapter VI: The Principles and Rules of International Law Governing Maritime Delimitation and Their Application in this Case.

This chapter reviews the principles and rules of international law relevant to maritime delimitation and their application to the geographical and other circumstances of the present case in order to achieve an equitable result. It starts by examining the "equitable principles/relevant circumstances" rule as the basic rule of maritime delimitation in the absence of an agreed boundary. Then it identifies the relevant coasts of the Parties for the purposes of the delimitation, and the relevant area within which the "equidistance/special circumstances" rule falls to be applied. It addresses the starting-point for the delimitation, where the land boundary between the Parties meets the sea, and shows the manner in which that point was agreed in 1929-1930. It then discusses the construction of the provisional equidistance line and shows that there are no special or relevant circumstances characterizing the area to be delimited which call for the adjustment of that line, and that the equidistance line itself results in an equal and equitable division of the areas appertaining to the Parties without any "cut-off" effect or undue encroachment. Finally, it demonstrates that a delimitation based on the application of the equidistance method satisfies the test of proportionality and achieves an equitable result based on the facts of the case.

(g) Chapter VII: Peru's Maritime Entitlements Off Its Southern Coast – The 'Outer Triangle'.

This chapter describes the rights claimed by Chile beyond its 200-mile zone through its concept of the so-called "Presential Sea", and shows that Chile's claimed "Presential Sea" encroaches deeply upon Peru's maritime domain, well within the 200-mile area to which Peru is entitled. Finally, it demonstrates that such a claim is clearly incompatible with the exclusive sovereign rights appertaining to Peru.

(h) Chapter VIII: Summary.

In accordance with Practice Direction II of the International Court of Justice, a summary of Peru's reasoning is presented in this final chapter.

31. Following the Summary in Chapter VIII, Peru presents its Submissions. In accordance with Article 50 of the Rules of the Court, Peru's Memorial also contains two (2) volumes of documentary annexes (Volumes II and III) together with a volume of maps and figures (Volume IV). A list of the documentary annexes and of the maps and figures appears after Peru's Submissions as well as a list of documents filed with the Court's Registry in accordance with Article 50(2) of the Rules of the Court.

CHAPTER I

HISTORICAL BACKGROUND

I. Introduction

- 1.1 The Government of Peru has chosen to submit its maritime dispute with Chile to the International Court of Justice so that the matter can be settled on the basis of international law, and respecting the sovereign equality of the two States. This is the method of dispute settlement for which the American States provided in the Pact of Bogotá and is a reflection of the principles of mutual respect and good-neighbourliness which guide relations between the American States.
- 1.2 In order to explain how the agreed land boundary between Peru and Chile – including the point at which the land boundary meets the sea and from which the maritime delimitation must start – was fixed, this chapter focuses upon some important historical facts in the context of the maritime dispute between Peru and Chile.
- 1.3 Although Peru and Chile did not share territorial boundaries until 1883, they had a strong relationship during a period in which Peru enjoyed an exceptional position in the region. Since their independence (Chile in 1818 and Peru in 1821), Chile struggled to achieve a predominant role in the South-East Pacific. The War of the Pacific (1879-1883) declared by Chile against Bolivia and Peru was a direct consequence of that objective.

- 1.4 As a result of territorial losses by Peru and Bolivia in that war, Peru and Chile became bordering neighbours. With the 1929 Treaty of Lima, Peru and Chile reached an agreement on outstanding issues arising from the war, a final land border was established and their relationship improved.
- 1.5 Starting from the 1952 Declaration of Santiago, Peru, Chile and Ecuador – later joined by Colombia – worked together in order to defend their claim to a maritime zone of 200 nautical miles and took on a pioneering role in the creation of the modern Law of the Sea.
- 1.6 The relationship between Peru and Chile has continued to develop in many areas during recent decades and Peru’s Application to the Court seeks a solution of the dispute without impeding the development of friendly relations between the two countries.

II. Colonial Times and Early Republican History

- 1.7 The Viceroyalty of Peru was the most important Spanish dominion in South America. During the colonial period the bond between the Viceroyalty of Peru and the Captaincy-General of Chile was quite strong. Through trade and the mining industry, a complex productive and commercial system that extended throughout Peru, Bolivia, northern Argentina and Chile was established during the first centuries of that period²⁹. Trade was carried out under the control of Lima-based merchants (the ‘Lima Consulate’) who owned the ships and in many ways actually set the rules of the commercial exchange³⁰.

²⁹ Sempat Assadourian, Carlos: *El Sistema de la Economía Colonial: Mercado Interno, Regiones y Espacio Económico*. Lima, IEP, 1982, pp. 11-17.

³⁰ Flores Galindo, Alberto: *Aristocracia y Plebe. Lima, 1760-1830*. Lima, Mosca Azul Editores, 1984, pp. 54-59; Villalobos, Sergio: *Chile y Perú. La historia que nos une y nos separa 1535-1883*. Santiago de Chile, Editorial Universitaria, 2002, pp. 13-16; Céspedes del Castillo, Guillermo: *Historia de España*. Barcelona, Editorial Labor S.A., 1983, Vol. VI (América Hispánica), pp. 83, 157.

- 1.8 After its independence, Peru did not share any boundary with Chile because Bolivia's territory lay between the two countries (see **Figure 1.1**). Therefore, the relationship between Peru and Chile at that time did not give rise to any territorial or maritime questions.
- 1.9 In the 1830s Diego Portales, a prominent Chilean statesman who was Minister of Interior, Foreign Affairs, War and Navy, argued for the adoption of a clear principle in Chilean foreign policy: Chile had to prevent Peru from attaining once more the political and military predominance it had enjoyed in Colonial times. This principle has been a key element in Chile's foreign and security policies since the nineteenth century³¹.
- 1.10 The application of this principle was evident when Bolivian President Andrés de Santa Cruz organized the Peru-Bolivian Confederation in 1836. This raised the concerns of Diego Portales, who advised the Chilean President to take action against the Confederation. Portales recorded his thoughts about the Confederation in the following way:

“The Confederation must forever disappear from the American scene. By its geographical extent; by its larger white population; by the combined wealth of Peru and Bolivia, until now scarcely touched; by the rule that the new organization would try to exert in the Pacific, taking it away from us ... the Confederation would drown Chile”³².

³¹ See Collier, Simon and Sater, William F.: *A History of Chile 1808-1994*. Cambridge, Cambridge University Press, 1996, pp. 63-69; Góngora, Mario: *Ensayo Histórico Sobre la Noción de Estado en Chile en los Siglos XIX-XX*. Santiago de Chile, Editorial Universitaria, 1998, pp. 68-71.

³² De la Cruz, Ernesto and Feliú Cruz, Guillermo: *Epistolario de Don Diego Portales 1821-1837*. Santiago de Chile, Dirección General de Prisiones, 1937, Vol. III, p. 453. On this point, Robert Burr's interpretation of Portales thought is noteworthy: “Chile's dominant political figure thus proved himself to be the possessor of a thoroughly sophisticated concept of power ... And in his sense of Chile's inferiority to the former viceregal capital, Portales reflected the attitudes of Chilean leaders as they confronted the growing power of Santa Cruz, and decided that that power must be definitively destroyed.” See Burr, Robert N.: *By Reason or Force*. Los Angeles, University of California Press, 1965, pp. 38-39.

Spanish text reads as follows:

“La Confederación debe desaparecer para siempre jamás del escenario de América. Por su extensión geográfica; por su mayor población blanca; por las riquezas conjuntas del Perú y Bolivia, apenas explotadas ahora; por el dominio que la nueva organización trataría de ejercer en el Pacífico, arrebatándonoslo ... la Confederación ahogaría a Chile”.

- 1.11 Bernardo O’Higgins, considered the “father of the Chilean Nation”, at that time in exile in Peru, warned about the possibility that Diego Portales would use a pretext to declare war against the Peru-Bolivian Confederation. Backing the efforts displayed by the Confederation to avoid the war, O’Higgins wrote to Argentine General José de San Martín, with whom he had collaborated in the independence of Peru: “... Minister Portales ... having disposed himself for war, fears his fall in times of peace”³³, adding:

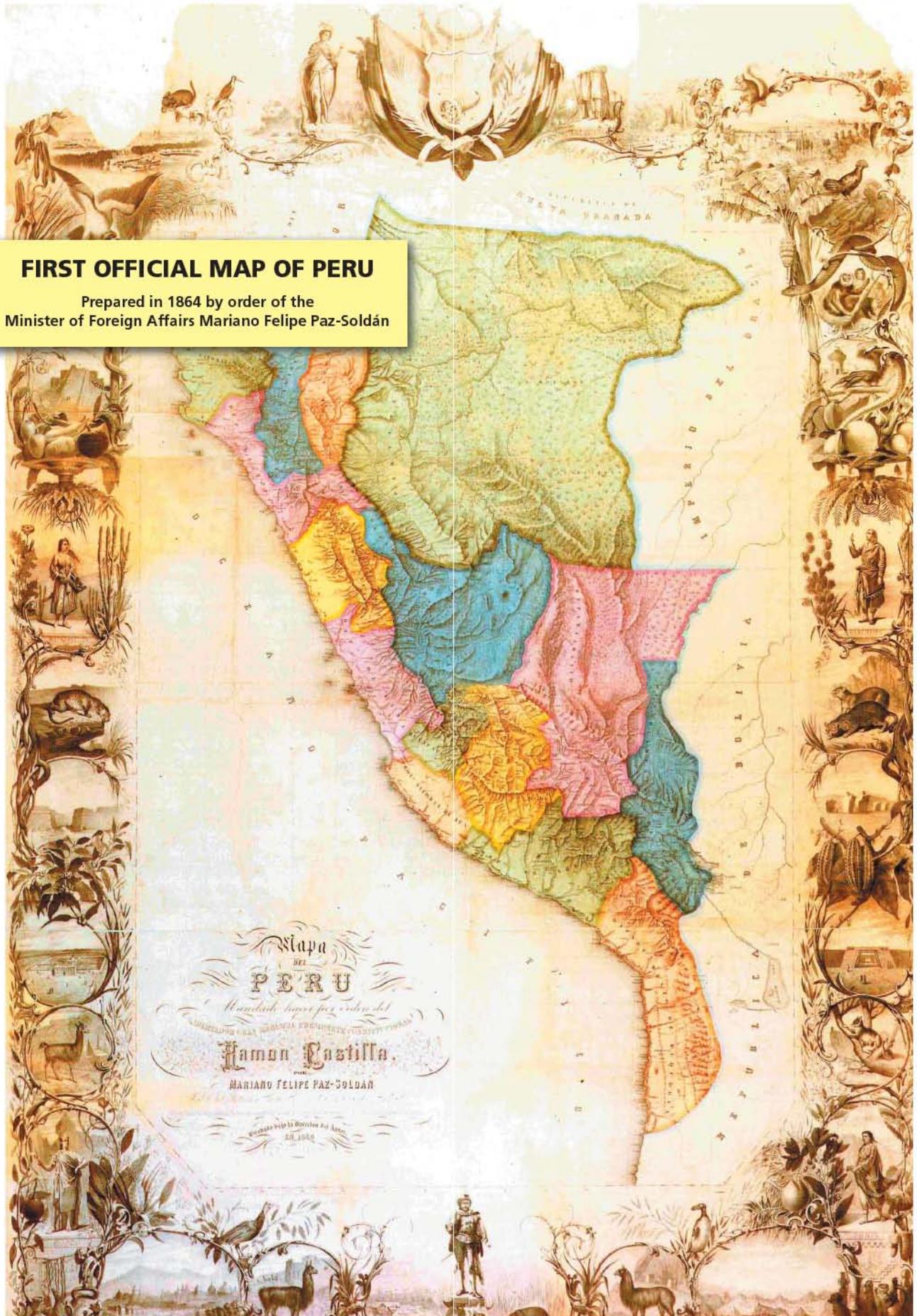
“... [Portales] should repent himself of kindling wars and enmities that lead to the ultimate ruin of our common Nation! To those to whom nothing has cost and wish to elevate themselves on the ruin of those who sacrifice themselves for their dear homeland, national honour, the prosperity of America and public peace are of small regard, because lacking entitlement to govern and unleash their aspirations, they want to prevail by force over reason and justice.”³⁴

Spanish text reads as follows:

“... que [Portales] se arrepienta de encender guerras y enemistades que conducen a la última ruina de nuestra común patria! A los que nada les ha costado y quieren elevarse sobre la ruina de los que se sacrifican por su caro suelo, poco les importa el honor nacional, la prosperidad de la América y la

³³ Archivo Nacional: *Archivo de don Bernardo O’Higgins*. Santiago de Chile, Imprenta Universitaria, 1951, Vol. IX, p. 33. (Spanish text: “... el Ministro Portales ... habiéndose dispuesto para la guerra, teme su caída en la paz.”).

³⁴ *Ibid.*



FIRST OFFICIAL MAP OF PERU
Prepared in 1864 by order of the
Minister of Foreign Affairs Mariano Felipe Paz-Soldán

Figure 1.1

pública tranquilidad, porque no teniendo título para gobernar y dar anchura a sus aspiraciones, quieren por la fuerza sobreponerse a la razón y a la justicia.”

- 1.12 Nevertheless, Chile decided that a political entity like the Peru-Bolivian Confederation was a threat for Chilean security. Chile therefore organized two military expeditions against the Confederation. The first expedition failed, but the second defeated the Confederation’s army in 1839³⁵ resulting in the break-up of the Confederation.
- 1.13 With the introduction of steamships in the 1840s, the passage of merchant ships from the Atlantic Ocean to the Pacific Ocean through the Strait of Magellan and Cape Horn increased substantially, allowing Chile to develop its own trade policies³⁶. In the nineteenth century there was strong competition between the ports of Callao (Peru) and Valparaíso (Chile), which vied for the role of hub in the South-East Pacific Ocean. This competition focused on tariffs and tax policies³⁷.

III. The War of the Pacific (1879-1883)

- 1.14 The War of the Pacific (1879-1883) fundamentally changed the relationship between Peru and Chile. In 1879, Chile asserted that Bolivia had breached an international treaty signed by the two countries in 1874, which had set out conditions for the exploitation of Bolivian nitrates by Chile. On 14 February 1879, Chile invaded the Bolivian province of Antofagasta, where Chile had significant investments in nitrates³⁸.

³⁵ Fernández Valdés, Juan José: *Chile-Perú. Historia de sus Relaciones Diplomáticas entre 1819-1879*. Santiago de Chile, Editorial Cal & Canto, 1997, pp. 91-120.

³⁶ Querejazu Calvo, Roberto: *Guano, Salitre, Sangre. Historia de la Guerra del Pacífico (La Participación de Bolivia)*. La Paz, Librería Editorial “Juventud”, 1998, pp. 28, 32.

³⁷ Wagner de Reyna, Alberto: *Historia Diplomática del Perú 1900-1945*. Lima, Fondo Editorial del Ministerio de Relaciones Exteriores del Perú, 1997, p. 31.

³⁸ The Bolivian province of Antofagasta and the Peruvian southern province of Tarapacá were rich in nitrates and guano. Nitrates were used to manufacture gunpowder and also as a fertilizer. It was a lucrative business during the second half of the nineteenth and early twentieth century. Guano is a natural fertilizer produced by seabirds.

- 1.15 Peru was a Party to a Defence Alliance Treaty with Bolivia and tried to find a peaceful solution to the dispute between Chile and Bolivia. These efforts were unsuccessful, and on 5 April 1879, Chile declared war on Peru and Bolivia.
- 1.16 When the war broke out Chile had far more and better weapons and ships than both Peru and Bolivia. The burden of the war fell mainly on Peru because Bolivia had lost most of its army early in the conflict. Despite the military handicap, the Peruvian Admiral Miguel Grau succeeded in holding back the Chilean Navy for several months, but Chile won control of the sea and then initiated the land campaign. Peruvian Colonel Francisco Bolognesi and a handful of Peruvian patriots died on 7 June 1880 defending the Morro de Arica, in a key battle on Peruvian soil. By 1881, despite a staunch defence – particularly in the highlands, under the command of Andrés Cáceres – Chile had occupied a great expanse of the Peruvian territory, including Lima, the capital.
- 1.17 The effects of the war were traumatic for Peruvians. There were thousands of civilian casualties and cities were destroyed. Many public buildings and institutions, including San Marcos University and the National Library in Lima, were plundered³⁹. In addition, Chile undertook control of guano⁴⁰ and nitrate production; furthermore, set fire to the coastal sugar plantations and their modern refineries. As a result, the Peruvian economy was destroyed⁴¹.

³⁹ Pradier Fodéré, Paul: *Le Chili et le droit des gens*. Gand, L. de Busscher, 1883, pp. 4-10. Some of the books and archives taken from Lima were returned to Peru as recently as 2008.

⁴⁰ Guano was used as fertilizer since ancient times, as shown by the discovery of pre-Inca (Mochica) tools in deep layers of fossilized guano. It was also used as fertilizer by the Incas and later, during colonial times, by native Peruvians. Peruvian guano had been studied in Europe since 1804 and attracted particular attention from the time of the industrial revolution. In London its price reached 25 pounds per ton, and many businessmen tried to get permits from the Peruvian Government for its extraction and sale. See Querejazu Calvo, Roberto, *op. cit.*, pp. 27-28.

⁴¹ Basadre, Jorge: *Historia de la República del Perú 1822-1933*. 7th ed. Lima, Editorial Universitaria, 1983, Vol. VI. pp. 214-216; also Pradier Fodéré, Paul, *op. cit.*, pp. 4-6.

- 1.18 Peru signed and ratified the 1883 Treaty of Ancón while Chilean troops were still occupying its territory. With the military victory in the War of the Pacific, Chile's international pre-eminence in the area increased⁴².
- 1.19 Mario Góngora, a well-known Chilean historian, understood that war was the means by which the Chilean State consolidated in the nineteenth century. Conquering wars expanded its territorial domain. Góngora wrote:

“Well then, in the nineteenth century war also becomes a key historical factor ... along the century, the 1836-1839 war against the Peru-Bolivian Confederation of Santa Cruz, the naval war against Spain (1864-1866), the War of the Pacific (1879-1883) – which was lived as a national war – follow one another.

...

The last century is, thus, marked by war.

...

Starting with the wars of Independence, and after the successive victorious wars of the nineteenth century, a sentiment and a properly ‘national’ conscience – ‘Chileanness’ – has been progressively under construction.”⁴³

Spanish text reads as follows:

“Pues bien, en el siglo XIX la guerra pasa a ser también un factor histórico capital ... se suceden, a lo largo del siglo, la guerra de 1836-1839 contra la Confederación Perú-Boliviana de Santa Cruz, la guerra naval contra España (1864-1866), la guerra del Pacífico (1879-1883), vivida como guerra nacional.

...

El siglo pasado está pues marcado por la guerra.

...

A partir de las guerras de la Independencia, y luego de las sucesivas guerras victoriosas del siglo XIX, se ha ido constituyendo un sentimiento y una conciencia propiamente ‘nacionales’, la ‘chilenidad’.”

⁴² Collier, Simon: “From Independence to the War of the Pacific”. In: Leslie Bethell ed., *Chile Since Independence*. Cambridge, Cambridge University Press, 1993, p. 31.

⁴³ Góngora, Mario, *op. cit.*, pp. 66-67, 72.

IV. The 1883 Treaty of Ancón and the Plebiscite on Tacna and Arica

1.20 The terms of the 1883 Treaty of Ancón were very harsh for Peru. By this Treaty, Peru lost the coastal province of Tarapacá, rich in natural resources. Besides guano, the areas obtained by Chile had nitrate mines which were of great significance for its economy. Much later, copper mines – many of them in the conquered territories – would become the source of the key export item of the Chilean economy. At the same time, social and economic interaction was broken between the provinces conquered by Chile and southern Peru.

1.21 Furthermore, Article 3 of the 1883 Treaty of Ancón stated that:

“The territory of the Provinces of Tacna and Arica ... shall continue in the possession of Chile ... during a period of ten years ... After the expiration of that term a plebiscite will decide by popular vote whether the territory of the above-mentioned Provinces is to remain definitely under the dominion and sovereignty of Chile or is to continue to constitute a part of Peru.”⁴⁴ (See **Figure 1.2**).

Spanish text reads as follows:

“El territorio de las Provincias de Tacna y Arica ... continuará poseído por Chile ... durante el término de diez años ... Expirado este plazo, un plebiscito decidirá en votación popular si el territorio de las Provincias referidas queda definitivamente del dominio y soberanía de Chile ó si continúa siendo parte del territorio peruano.”

1.22 Chile occupied not only Tarapacá, Arica and Tacna but also the province of Tarata, acting contrary to the 1883 Treaty of Ancón. Peru unsuccessfully demanded the return of Tarata on the grounds that Chile had no right to that province under the Treaty⁴⁵.

⁴⁴ Annex 43.

⁴⁵ García Salazar, Arturo: *Historia Diplomática del Perú 1884-1927*. Lima, Imprenta A. J. Rivas Berrio, 1928, p. 136; Ríos Gallardo, Conrado: *Chile y Perú. Los Pactos de 1929*. Santiago de Chile, Editorial Nascimento, 1959, pp. 77, 149-151.

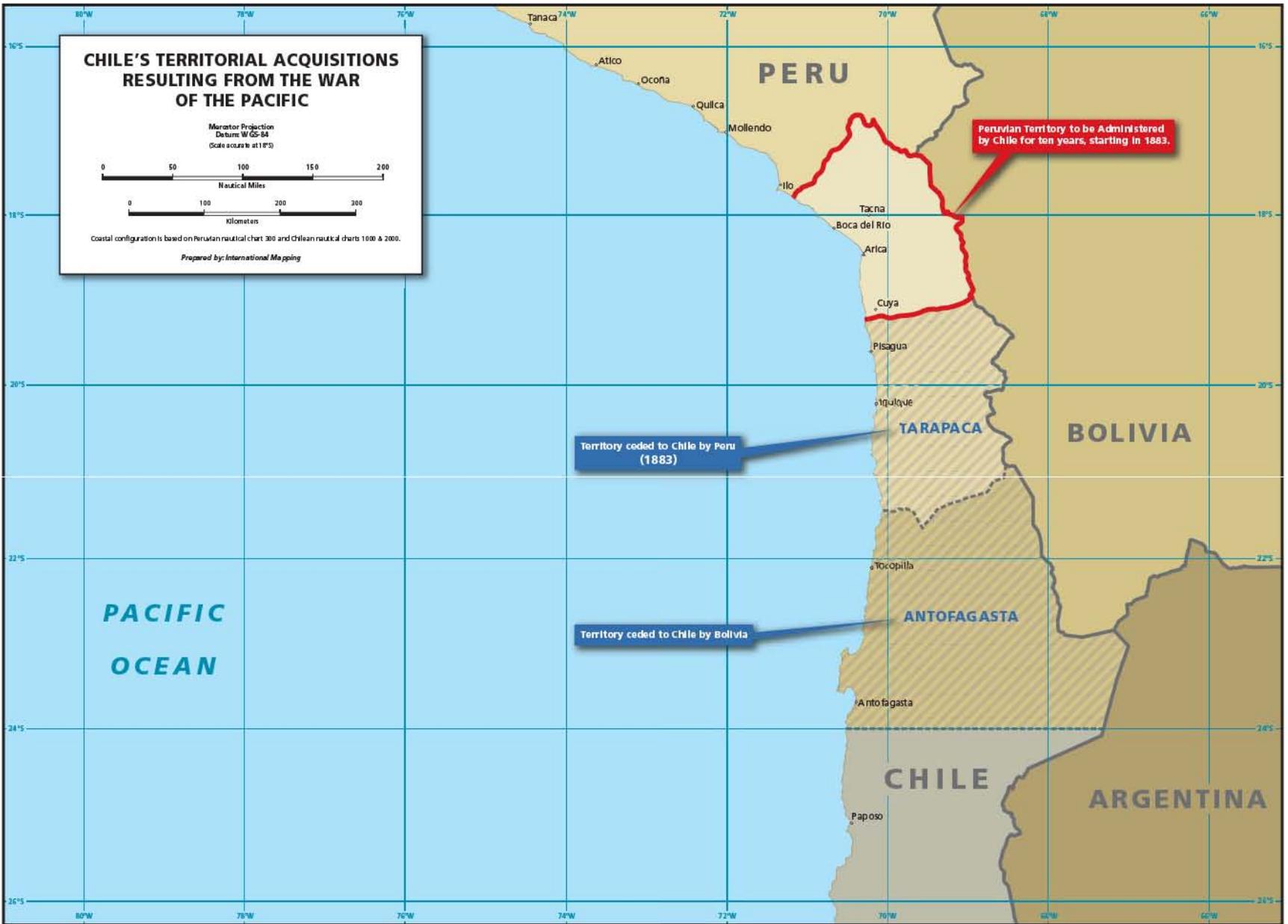


Figure 1.2

- 1.23 For several decades, problems concerning the implementation of the 1883 Treaty of Ancón gave rise to great difficulties in the relationship between Peru and Chile.
- 1.24 In spite of Peruvian demands, Chile did not hold the plebiscite in 1894, as it was obliged to do under article 3 of the Treaty. It delayed the plebiscite in order to create pro-Chilean sentiment in the provinces of Tacna and Arica, through a process known as “Chilenization”⁴⁶. When, finally, it was ready to discuss the possibility of holding a plebiscite, Chile sought to impose unacceptable conditions on the process⁴⁷.
- 1.25 In the twentieth century, Peru severed diplomatic relations with Chile twice: in 1901, and again in 1910, because of Chile’s failure to convene the plebiscite and because of the worsening of the “Chilenization” policy in Tacna and Arica.
- 1.26 By 1919, the Peruvian Government came to the conclusion that any solution of the dispute with Chile would probably have to involve a process of arbitration in which the President of the United States would be a key actor.
- 1.27 In 1922 Peru and Chile accepted the participation of the United States Government in the search for a solution to the dispute. Under the auspices of the United States Secretary of State, both countries signed a Protocol of Arbitration, with Supplementary Act, under which the President of the United States was to act as arbitrator⁴⁸.

⁴⁶ García Salazar, Arturo, *op. cit.*, pp. 84-86, 96-105; Ulloa, Alberto: *Para la Historia Internacional y Diplomática del Perú: Chile*. Lima, Editorial Atlántida, 1987, pp. 318-326; González Miranda, Sergio: *El dios Cautivo. Las Ligas Patrióticas en la Chilenización Compulsiva de Tarapacá (1910-1922)*. Santiago de Chile, Lom ediciones, 2004, pp. 47-112. For a detailed account of the policy applied by Chile in those territories, see also the “Tacna-Arica question (Chile, Peru)”, United Nations, *Reports of International Arbitral Awards*, Vol. II, pp. 935-944 <http://untreaty.un.org/cod/riaa/cases/vol_II/921-958.pdf> accessed 5 December 2008.

⁴⁷ García Salazar, Arturo, *op.cit.*, pp. 166-171.

⁴⁸ *Ibid.*, pp. 295-329; Ríos Gallardo, Conrado, *op. cit.*, pp. 68-76.

1.28 On 4 March 1925, the Award of the President of the United States ordered the following measures:

- (a) Article 3 of the 1883 Treaty of Ancón related to Tacna and Arica (quoted above, paragraph 1.21) was to remain in force.
- (b) A Plebiscitary Commission with control over the plebiscite was to be created.
- (c) The province of Tarata was to return to Peru⁴⁹.

1.29 Article 3 of the 1883 Treaty of Ancón stipulated that the plebiscite had to be held after 10 years, a deadline which, by 1925, had long expired. The President of the United States determined that Article 3 nonetheless remained valid because Peru and Chile had been negotiating its implementation throughout the preceding decades. In accordance with the ruling of the Arbitrator, a Plebiscitary Commission was appointed consisting of three members – one appointed by Peru, one appointed by Chile, and one, who chaired the Commission, appointed by the President of the United States. The Commission had two successive chairmen: General John J. Pershing and Major General William Lassiter.

1.30 General Pershing resigned in January 1926. The Commission continued under Major General William Lassiter, ending its work unsuccessfully a few months later with the adoption of a Resolution by which he proposed the termination of the plebiscitary proceedings in the following terms:

“Pursuant to the terms of the Treaty of Ancon ... the creation and maintenance of conditions proper and necessary for the holding of a free and fair plebiscite ... constituted an obligation resting upon Chile ... the Commission finds as a fact that the failure of Chile in this regard has frustrated the efforts of the Commission to hold the plebiscite as contemplated by the Award.

...

The Plebiscitary Commission accordingly decides,

...

⁴⁹ See para. 1.22 above.

First, That a free and fair plebiscite as required by the Award is impracticable of accomplishment”.⁵⁰

- 1.31 Later, General Pershing and Major General Lassiter made a joint report to the Arbitrator regarding the conditions for the plebiscite. That report pointed out –

“the true cause of this delay, as well as the real reason of this lack of greater progress, is none other than the conduct of the Chilean authorities in the control of the plebiscitary territory, who in disregard of the Treaty of Ancon, the Protocol of Arbitration, and the Award of the Arbitrator, and in flagrant fraud of their provisions, have since the date of the submission of the Counter Cases to the Arbitrator, April 18, 1924, and the date of the Award, March 9, 1925, maintained a veritable reign of terror in the plebiscitary territory.”⁵¹

V. The 1929 Treaty of Lima

- 1.32 Peru and Chile re-established diplomatic relations in September 1928. From October 1928 to May 1929 a complex and rapid process of negotiation took place. On 3 June 1929, Peru and Chile signed the Treaty of Lima and its Additional Protocol, solving the outstanding issues concerning Tacna and Arica.
- 1.33 Under this Treaty, Tacna returned to Peru while Chile retained Arica, thus disrupting the natural economic unit formed by the two provinces. Peru kept some rights and servitudes in Arica, such as the use of the Uchusuma and Mauri water channels, and rights on the railway from Tacna to Arica. The Treaty provided that Chile would build substantial railway and port facilities

⁵⁰ *Joint Report to the Arbitrator, Tacna-Arica Arbitration, by General John J. Pershing, First President, and Major General William Lassiter, Second President, of the Plebiscitary Commission, Tacna-Arica Arbitration*, “Text of Resolution to Terminate Plebiscitary Proceedings”, pp. 364-365. Annex 86.

⁵¹ *Ibid.*, “True Cause of Delay”, pp. 152-153.

for the exclusive use of Peru in Arica's harbour. The result of the Treaty was that although Tacna would remain in Peru, while its city-harbour of Arica would henceforth belong to Chile, Tacna and Arica would both maintain strong connections in order not to deprive Tacna from access to its natural port and allow both provinces to develop.

- 1.34 Article 2 of the 1929 Treaty of Lima stipulated how the border between the two countries was to be drawn:

“The territory of Tacna and Arica shall be divided into two portions of which Tacna, shall be allotted to Peru and Arica to Chile. The dividing line between the two portions, and consequently 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. It shall continue eastwards parallel to the line of the Chilean section of the Arica La Paz railway and at a distance of ten kilometres therefrom, with such sinuosities as may be necessary to allow the local topography to be used, in the demarcation, in such a way that the sulphur mines of the Tacora and their dependencies shall remain within Chilean territory. The line shall then pass through the centre of the Laguna Blanca, so that one portion thereof shall be in Chile and the other in Peru.”⁵²

Spanish text reads as follows:

“El territorio de Tacna y Arica será dividido en dos partes, Tacna para el Perú y Arica para Chile. La línea divisoria entre dichas dos partes y, en consecuencia, la frontera entre los territorios del Perú y de Chile, partirá de un punto de la costa que se denominará ‘Concordia’, distante diez kilómetros al Norte del puente del Río Lluta, para seguir hacia el Oriente paralela a la vía de la sección chilena del Ferrocarril de Arica a La Paz y distante diez kilómetros de ella, con las inflexiones necesarias para utilizar, en la demarcación, los accidentes

⁵² The Treaty of Lima of 3 June 1929 is included as Annex 4 to the Application. It is joined anew for the convenience of the Court as Annex 45.

geográficos cercanos que permitan dejar en territorio chileno las azufreras del Tacora y sus dependencias, pasando luego por el centro de la Laguna Blanca, en forma que una de sus partes quede en el Perú y la otra en Chile.”

Additionally, Article 5 of that Treaty stipulated that:

“For the use of Peru, the Government of Chile shall, at its own costs, construct within one thousand five hundred and seventy-five metres of the Bay of Arica a landing stage for fair-sized steamships, a building for the Peruvian Customs office, and a terminal station for the Tacna railway. Within these zones and establishments the transit traffic of Peru shall enjoy the freedom that is accorded in free ports under the most liberal régime.”⁵³

Spanish text reads as follows:

“Para el servicio del Perú el Gobierno de Chile construirá a su costo, dentro de los mil quinientos setenta y cinco metros de la bahía de Arica un malecón de atraque para vapores de calado, un edificio para la agencia aduanera peruana y una estación terminal para el Ferrocarril a Tacna, establecimientos y zonas donde el comercio de tránsito del Perú gozará de la independencia propia del más amplio puerto libre.”

- 1.35 Peru received back the province of Tacna on 28 August 1929, before the demarcation process started.
- 1.36 During the demarcation process, delegates could not agree on the exact location on the ground of point “Concordia”, the starting-point on the coast of the land border. This disagreement was resolved by the Peruvian and Chilean Ministers of Foreign Affairs, who agreed to instruct their delegates that point Concordia was to be the point of intersection between the Pacific Ocean and an arc with a radius of ten kilometres having its centre on the bridge over the River Lluta. It was also agreed that “[a] boundary marker shall be placed at

⁵³ *Ibid.*

any point of the arc, as close to the sea as allows preventing it from being destroyed by the ocean waters.”⁵⁴

- 1.37 The commitments that Chile had made towards Peru were finally fulfilled seven decades later, in 1999, when the Execution Act concerning Article 5 of the 1929 Treaty of Lima was signed by the two countries⁵⁵.

VI. Peru-Chile Expanding Relations

- 1.38 Notwithstanding the difficulties in relations between the Parties discussed above, it is striking that Peru and Chile (together with Ecuador) subsequently became pioneers in the development of a number of key elements of the modern Law of the Sea. In 1947 Peru and Chile proclaimed maritime rights extending out to a distance of 200 nautical miles from their coasts. This was followed by the 1952 Declaration of Santiago pursuant to which Peru, Chile and Ecuador acted jointly to declare their rights out to a minimum distance of 200 nautical miles from their coasts, in order to protect and preserve their natural resources adjacent to their territory.
- 1.39 In addition, the three countries signed a further Convention by which they created the Permanent Commission for the South Pacific, a new subregional organization that contributed to shape the world’s modern vision of the international Law of the Sea. The Commission had the task of co-ordinating political joint action in defence of the 200-mile zone and supporting the scientific and economic co-operation among the member States.
- 1.40 At the time, these three countries knew that they were creating the basis for a new Law of the Sea, and it is no understatement to say that their efforts changed the way in which much of the rest of the world would come to

⁵⁴ Instructions from the Chilean Government to its delegation with the Agreement of the Ministries of Foreign Affairs (of Peru and Chile) are reproduced in Brieba, Enrique: *Límites entre Chile y Perú*. Santiago de Chile, Instituto Geográfico Militar, 1931, Vol. I: Estudio técnico y documentos, p. 39. (Spanish text: “[s]e colocará un hito en cualquier punto del arco, lo más próximo al mar posible, donde quede a cubierto de ser destruido por las aguas del océano.”). See Annex 87.

⁵⁵ Annex 60.

understand and approach the extent of a coastal State's rights over maritime areas situated off the coast. While these initiatives did meet with opposition at the time, they were the clear precursor to several important principles forming the basis of the modern Law of the Sea.

- 1.41 From the First United Nations Conference on the Law of the Sea, held in Geneva in 1958, Peru, Chile and Ecuador worked together in an effort to change international law. Nonetheless, at that time they did not get the necessary support from other delegations in favour of the 200-mile zone. The fundamental contribution subsequently made by the three countries at UNCLOS III, which gave birth to the modern Law of the Sea, is well recognized.
- 1.42 Relations between Peru and Chile have strengthened and extended, notably during recent decades, in spite of their complexity and sometimes difficult situations. Several common actions in issues of foreign policy at the bilateral and multilateral level, economic co-operation, high level visits, mutual goodwill gestures and confidence-building measures by both Parties have all contributed greatly to the enhancement of their relations. Trade and investment have also substantially increased between the two countries, as well as migration.
- 1.43 Peru and Chile share interests in the Latin American region and in international relations. Chile recently rejoined the Andean Community as an associated member, both countries participate actively in the South American integration process and continue to strengthen their co-operation in the framework of the Permanent Commission for the South Pacific. Peru and Chile are also the only South American members of the Asia-Pacific Economic Cooperation Forum (APEC), and are jointly promoting the establishment of an association of the Latin American countries facing the Pacific Rim.
- 1.44 In that context Peru's request to the International Court of Justice to settle the maritime dispute is intended to keep the controversy strictly on legal grounds without affecting the development of the relationships between both countries.

CHAPTER II

THE GEOGRAPHICAL SETTING

- 2.1 This chapter addresses the geographical setting within which the delimitation is to be effectuated. Section I describes the general configuration of the Parties' coasts, including the Parties' baselines. Section II discusses the characteristics of the delimitation area including the incidence of natural resources in the area and the importance of having access to such resources for Peru.

I. The General Configuration of the Peruvian and Chilean Coasts

- 2.2 As can be seen from **Figure 2.1**, the continental coasts of Peru and Chile are situated on the west coast of South America. Peru is located about one-third of the way down the Pacific coast. To the north of Peru lies Ecuador while, to the south, Peru shares a land boundary with Chile that meets the sea at a point named Concordia, whose co-ordinates are 18°21'08" S, 70°22'39" W WGS84⁵⁶. The coast of Chile comprises the southern half of the Pacific littoral of South America. It stretches from the land border with Peru to the southern tip of Cape Horn where Chile's border with Argentina is located.

⁵⁶ See para. 2.13 below.

- 2.3 It can also be seen from **Figure 2.1** that the general direction of the west coast of South America changes markedly very close to the point where the starting-point of the Peru-Chile land boundary is situated. North of the Peru-Chile boundary, the orientation of the coasts of Peru, Ecuador and Colombia assumes a convex configuration with Peru's coast, south of approximately the 5° S latitude, trending in a northwest-southeast direction down to the land boundary with Chile. This general trend ends abruptly near where the Peru-Chile land boundary meets the sea. The Chilean coast, to the south, thereafter runs in an almost due north-south direction.
- 2.4 In other words, the land boundary between the Parties meets the sea close to the deepest point in the concavity formed by the Peruvian coast to the north, which trends in one direction, and the Chilean coast in the south, which extends in another. It is this geographical configuration which gives rise to overlapping maritime entitlements and is thus central to the present dispute.

A. PERU'S COAST

- 2.5 Peru's coastal front spans a length of 2,905 kilometres. For the most part, Peru's coast is uncomplicated. From the starting-point on the land boundary with Chile, it extends in a north-westerly direction to the city of San Juan situated just below the 15° S latitude. From here the coast tracks more in a north-northwest direction past the capital city of Lima, which is the only South American capital lying on the Pacific Ocean, to a point (Punta Falsa)⁵⁷ situated just south of the 5° S latitude. At that point, Peru's coast turns to the north for a short stretch before it recedes back to the northeast into the Gulf of Guayaquil where the land boundary between Peru and Ecuador terminates.

⁵⁷ These locations can be seen in **Figure 2.3**.



Figure 2.1

- 2.6 There are a number of Ecuadorian islands in the vicinity of Ecuador's land boundary with Peru. These include Isla Puná and the smaller island of Santa Clara situated within the Gulf of Guayaquil, and the Isla Pelado, Isla Salango and Isla de la Plata, located a short distance to the north. These features are depicted on **Figure 2.2**. While none of these islands has any bearing on the delimitation of maritime zones between Peru and Chile, they are mentioned here because their location is relevant to the interpretation of two instruments entered into by Peru, Chile and Ecuador relating to their maritime zones – the 1952 Declaration of Santiago and the 1954 Agreement relating to a Special Maritime Frontier Zone (hereinafter “the 1954 Agreement on a Special Zone”) – discussed in Chapter IV below.
- 2.7 For its part, Peru possesses a modest number of islands, such as the Lobos Islands located just south of Punta Falsa, and a few small islands lying off Peru's northern coast, between the 10° and 15° S latitudes. However, there are no Peruvian islands in the vicinity of the land boundary with Chile and, consequently, no Peruvian islands that are relevant for delimitation in this case, as can be seen on the map of the two border areas appearing as **Figure 2.2**.
- 2.8 The land boundary between Peru and Chile meets the sea at Point Concordia, the co-ordinates of which, as noted above, are 18°21'08" S, 70°22'39" W WGS84. While this aspect of the case is addressed in more detail in Chapter VI, suffice it to note here that the initial segment of the land boundary, including the point where it meets the sea, was established pursuant to the 1929 Treaty of Lima entered into by Peru and Chile on 3 June 1929⁵⁸.
- 2.9 The reference to Tacna and Arica in the 1929 Treaty of Lima is to two provinces and towns bearing these names located close to the land boundary⁵⁹. As can

⁵⁸ Annex 45.

⁵⁹ See paras. 1.32-1.35 above.

be seen on **Figure 2.3**, the city of Tacna is located in Peruvian territory some 40 kilometres inland from the coast. The port-city of Arica (originally a Peruvian town and Tacna's natural harbour) is now situated in Chile and lies a few kilometres south of the boundary. The 1929 Treaty of Lima also refers to Concordia as the point on the coast from which the land boundary starts⁶⁰.

- 2.10 **Figure 2.3** also shows how the initial point on the land boundary lies almost exactly at the point where the configuration of the Pacific coast of South America changes direction. The Peruvian coast north of the land boundary runs in a southeast-northwest direction while Chile's coast to the south adopts a north-south orientation.
- 2.11 On the Peruvian side, there are three departments⁶¹ which border the sea in this area. From south to north these are the departments of Tacna, Moquegua and Arequipa. The principal Peruvian fishing port along this part of the coast is Ilo, located within the department of Moquegua and depicted on **Figure 2.3**. It lies about 120 kilometres northwest of the initial point of the Peru-Chile land boundary. **Figure 2.3** also shows the location of a number of other Peruvian coastal towns and fishing ports situated within the three departments mentioned above.
- 2.12 Peru's coast north of the land boundary is relatively smooth with no distinct promontories, offshore islands or other distinguishing features until the stretch of coast north of the 15° S latitude is reached.

⁶⁰ See paras. 1.34-1.36 above.

⁶¹ The territory of the Republic of Peru is divided in departments which are, in turn, subdivided into provinces.



Figure 2.2

2.13 Peru's baselines are set out in Law No. 28621 dated 3 November 2005 (Peruvian Maritime Domain Baselines Law, hereinafter "Peru's Baselines Law"). This law includes, in Annex 1 thereto, the geographical co-ordinates of the various points which determine Peru's baselines⁶². There are 266 such points, starting in the north with Point 1, which is the starting-point on the land boundary with Ecuador, and ending in the south with Point 266 (18°21'08" S, 70°22'39" W WGS84), which coincides with Point Concordia, where the Peru-Chile land boundary meets the sea. In compliance with Article 54 of the Peruvian Political Constitution of 1993 and in accordance with international law, Peru's Baselines Law establishes the baselines from which Peru's 200-mile maritime domain is measured. In this respect, Article 4 of the Law provides:

"In accordance with the Political Constitution of the State, the outer limit of the maritime domain of Peru is traced in such a manner that every point of the mentioned outer limit is at a distance of two hundred nautical miles from the nearest baselines point, pursuant to the delimitation criteria established in International Law."⁶³

Spanish text reads as follows:

"De conformidad con la Constitución Política del Estado el límite exterior del dominio marítimo del Perú es trazado de modo que cada punto del citado límite exterior se encuentre a doscientas millas marinas del punto más próximo de las líneas de base en aplicación de los criterios de delimitación establecidos por el Derecho Internacional."

⁶² Law No. 28621, Peruvian Maritime Domain Baselines Law of 3 November 2005 is Annex 5 to the Application. It is joined anew for the convenience of the Court as Annex 23.

⁶³ *Ibid.*

- 2.14 For the most part, Peru's baselines are constituted by "normal" baselines that follow the low-water mark along its coast. However, as depicted on **Figure 2.3**, there are a few limited areas along Peru's coast where a system of straight baselines is provided for. All of these areas lie close to, or north of, the 15° S latitude and thus more than 200 nautical miles from the land boundary with Chile. Accordingly, they fall outside the area of concern for purposes of this case. As noted above, within 200 nautical miles of the initial point on the land boundary with Chile, Peru's coast is relatively smooth and uncomplicated and there are no islands in this area.
- 2.15 Article 5 of Peru's Baselines Law provides that the Executive Branch of the Peruvian Government is responsible for issuing Peru's cartography depicting the limit of its maritime domain as set out in Article 4. On 11 August 2007, Supreme Decree No. 047-2007-RE⁶⁴ was enacted in furtherance of Peru's Baselines Law. That Decree provides that the cartography depicting Peru's maritime domain would be elaborated in three sectors: a northern sector between base points Nos. 1 to 74, a central sector from base points 74 to 146, and a southern sector from base points 146 to 266. Attached to the Decree is a chart illustrating the outer limit – southern sector – of the maritime domain of Peru – the sector that is relevant to delimitation with Chile.
- 2.16 A copy of the chart in question is reproduced as **Figure 2.4**. It shows the 200-nautical-mile maritime domain claimed by Peru in the southern sector. Also depicted on the chart is the "Area in Dispute" between Peru and Chile – a "kite" shaped area of about 68,000 square kilometres which, for purposes of comparison, is more than twice the size of the territory of Belgium.

⁶⁴ Supreme Decree No. 047-2007-RE is Annex 7 to the Application. It is joined anew for the convenience of the Court as Annex 24.



Figure 2.3

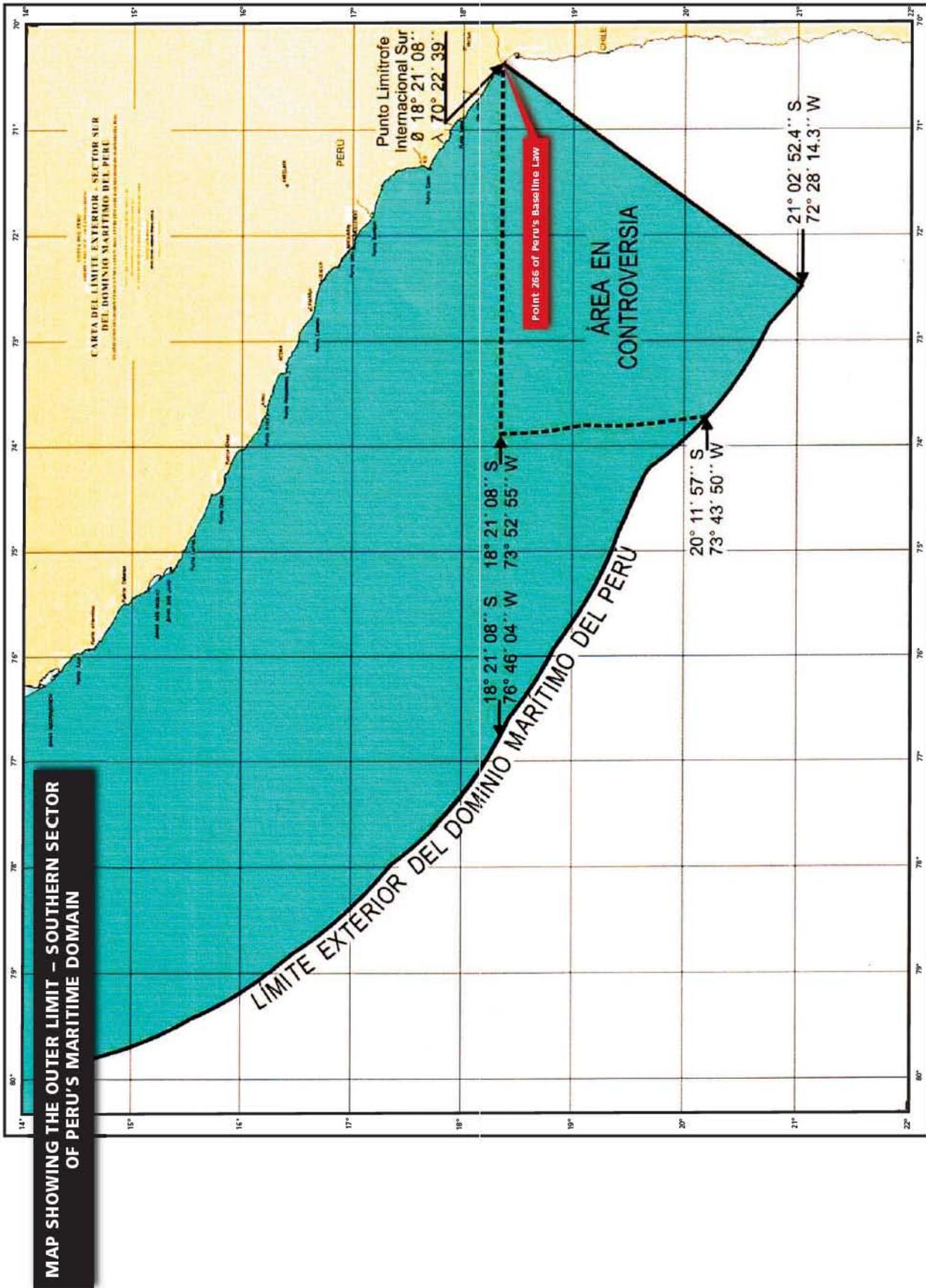


Figure 2.4

- 2.17 This area in dispute comprises the maritime area between (a) a line drawn from Point 266 on Peru's baselines situated at the initial point of the land boundary with Chile (Point Concordia) perpendicular to the general direction of Peru's southern coast to a distance of 200 nautical miles corresponding to Peru's 200-mile maritime domain, and (b) a line drawn along a parallel of latitude from the land boundary to a distance of 200 nautical miles, corresponding to the line that is claimed by Chile as the maritime boundary between the two countries. The dashed line that runs south on the chart from the end of Chile's claim line corresponds to the 200-nautical-mile limit of Chile's continental shelf and EEZ entitlement without prejudice to the issue of delimitation.
- 2.18 To the west, or seaward, of the "Area in Dispute" is a triangular-shaped area of about 28,350 square kilometres (equivalent to the size of Albania) which lies further than 200 nautical miles from Chile's coast but within 200 nautical miles of the coast of Peru. This is the area referred to in paragraphs 1, 12 and 13 of Peru's Application, with respect to which Peru requests the Court to adjudge and declare that Peru possesses exclusive sovereign rights given that it does not fall within 200 nautical miles of Chile's baselines – in other words, it constitutes an area over which Chile, contrary to its claims, has no legal entitlement. Peru's exclusive rights with respect to this area are discussed in greater detail in Chapter VII below.

B. CHILE'S COAST

- 2.19 Chile's coast is aligned in a general north-south orientation from the land boundary with Peru, in the north, to Cape Horn, in the south. The northern two-thirds of Chile's coast is relatively smooth with no marked promontories or other defining features. South of the 40° S latitude, Chile's coast becomes more complex, and is characterized by a series of indentations and island fringes. However, this stretch of coast lies far to the south of the relevant area which is the focus of the present delimitation, and is thus not germane to the case⁶⁵.

⁶⁵ See Chap. VI, Sec. III.

- 2.20 Well to the south of the maritime area lying off the land boundary with Peru, there are a number of isolated features, such as the islands of San Félix and San Ambrosio, and the Juan Fernández group which can be seen on **Figure 2.5**. None of these islands has any bearing on the delimitation in this case given their distance from the starting-point of the Peru-Chile land boundary and from the coasts of the Parties that are relevant to the delimitation.
- 2.21 In 1977, Chile enacted a system of straight baselines⁶⁶. As can be seen on **Figure 2.5**, these baselines only apply between the 41° and 55° S latitudes where Chile's coast is deeply indented – in other words, well south of the relevant area in the present case. In the vicinity of the land boundary at Point Concordia, Chile's coast exhibits no special geographical circumstances, and Chile's baselines are “normal” baselines constituted by the low-water mark along its coast. On 21 September 2000, Chile deposited with the United Nations charts showing its baselines, territorial sea, contiguous zone, EEZ and continental shelf⁶⁷. Chile claims a 200-nautical-mile continental shelf and EEZ measured from its baselines, as well as a so-called “Presential Sea” beyond this limit, the ill-founded nature of which is discussed in Chapter VII.

⁶⁶ Chilean Decree No. 416 of 14 July 1977. Annex 34.

⁶⁷ See **Figure 2.6** in Vol. IV. See also the list of geographical co-ordinates deposited by Chile with the Secretary-General of the United Nations in Annex 110. That list of co-ordinates indicates that point No. 1 of the Chilean baselines is located at 18°21'00" S WGS84. The 18°21'00" S WGS84 parallel of latitude corresponds to Marker No. 1 of the land boundary, located to the northeast of the point where the land boundary between both countries meets the sea according to the 1929 Treaty of Lima (Point Concordia, at the 18°21'08" S WGS84 parallel of latitude). Chilean cartography will be further discussed in Chap. V, Sec. III.



Figure 2.5

II. The Characteristics of the Maritime Area and Its Resources

2.22 The maritime area subject to delimitation between Peru and Chile is characterized by a number of distinct geological and geomorphological features, which limit the physical (as opposed to legal) continental shelves of the Parties, and by oceanographical elements which contribute to making the area rich in fishing resources. These will be discussed below.

A. THE CHARACTERISTICS OF THE SEA-BED AND THE SUBSOIL

2.23 The area offshore Peru and Chile represents a convergence zone between two tectonic plate boundaries: the Nazca Plate, which is a sub-set of the more extensive Pacific Plate lying under the Pacific Ocean, and the South American Plate underlying the continent of South America. The process of convergence between these two plates, with the former subducting under the latter, has resulted in the formation of a plate boundary and an offshore trench – the Peru-Chile trench – which parallels the coastline of the two countries and passes just offshore the point where the two countries' land boundary meets the sea⁶⁸.

2.24 Due to the geological and geomorphological characteristics of this offshore region, up to now the maritime area in dispute has not been the subject of hydrocarbon exploration. However, with advances in drilling technology, and with exploration being able to be carried out in increasingly deep ocean areas, this may very well change in the future. Moreover, the shelf area is also of interest for the presence of sedentary species and mineral resources.

⁶⁸ This can be seen on **Figure 6.1** in Chapter VI of this Memorial.

B. THE FISHING POTENTIAL OF THE AREA

- 2.25 In contrast, the areas lying off the coasts of Peru and Chile are rich in marine resources. The particular area of concern in this case is located in the Humboldt Current Large Marine Ecosystem – a system driven by the Humboldt Current which flows in a southeast-northwest direction from the southern tip of Chile to the vicinity of the land boundary between Peru and Chile and thence offshore Peru’s coast.
- 2.26 The Humboldt Current is one of the major upwelling systems of the world supporting an abundance of marine life and constituting a highly productive ecosystem in terms of biomass and overall biodiversity. Approximately, 18-20% of the world’s fish catch comes from the Humboldt Current Ecosystem, with particular pelagic species such as anchovies, sardines, jack mackerel and chub mackerel being amongst the most important. In the past, whaling was also important, but is now prohibited.
- 2.27 It was the enormous whaling and fishing potential of the areas situated off the coasts of Peru, Chile and Ecuador that lay at the root of their initiative in 1952 to proclaim 200-nautical-mile zones to protect and preserve the marine resources located therein under the 1952 Declaration of Santiago. While the species and quantity of fish caught in this area has varied over the years due to climatic changes, such as the *El Niño* phenomenon, access to the fish resources of the area remains critical to Peru’s economy as a whole, and in particular to the economic well-being of the Peruvian population living in the coastal regions of the departments of Tacna, Moquegua and Arequipa where fishing represents a central segment of the economy both in terms of employment and of food production. Peru’s southern ports account for 15% of the total fishing product of the country⁶⁹.

⁶⁹ Percentages derived from the total unloading in the ports of Atico, La Planchada, Mollendo, Matarani and Ilo. See Ministerio de la Producción: *Peru: Desembarque Total de Recursos Marítimos según Puerto, 1998-2007* <http://www.produce.gob.pe/RepositorioAPS/3/jer/DESEMSUBMENU02/01_14.pdf> accessed 20 January 2009.

- 2.28 As in the past, current Peruvian fishery activities in its southern waters continue to be vital to its people and both to its regional and national economies. Their main component, industrial fishery, has been particularly active in the three above-mentioned southern Peruvian departments since 1939⁷⁰, particularly in Ilo (in the department of Moquegua) and Matarani (in the department of Arequipa). In Moquegua, for example, the fishing industry is the second most important economic activity, after mining, and Ilo represents one of Peru's main fishing ports and the most important fishing centre in southern Peru. Ilo also supports a fishmeal and oil industry, plus a significant developing frozen fish industry. There are currently 12 frozen fish plants in the southern region of Peru.
- 2.29 This southern maritime region is one of the four Peruvian fishing regions (the other three regions correspond to those of the coast of Paita, Chimbote and Callao). It is also part of the so-called "Peruvian-Chilean elbow area"⁷¹, an ictiologically rich maritime space which both countries share.
- 2.30 In addition to industrial fishing, there is an important artisanal fishing activity (some 475 craft) in southern Peru. Most of the artisanal fleet operates off the departments of Tacna and Moquegua.
- 2.31 Access to the waters off the coast of southern Peru is therefore of critical importance to the local population and the country as a whole. However, this access has been hampered by the absence of a delimited maritime boundary with Chile, and the fact that, to avoid friction and incidents between the two countries, Peruvian fishermen's activities have been limited on a provisional

⁷⁰ Alvarez Velarde, Félix: *La Pesquería en Ilo y su Contexto Nacional*. Lima, Centro de Investigación, Educación y Desarrollo, 1984, p. 24.

⁷¹ Alvarez Velarde, Félix: "Pesquería Industrial del Sur, un peligro anunciado". (*Pesca Responsable, Revista Institucional de la Sociedad Nacional de Pesquería*, Year IV, No. 15, Lima, 2000, May, p. 19). Quoted in Agüero Colunga, Marisol: *Consideraciones para la Delimitación Marítima del Perú*. Lima, Fondo Editorial del Congreso del Perú, 2001, p. 225.

basis to the line of latitude and the zone of tolerance established in the 1954 Agreement on a Special Zone. In this respect, Peru has exhibited considerable self-restraint, but the need for a definitive delimitation is now critical.

- 2.32 This is one of the key reasons why a delimitation is now sought by Peru in order to provide the countries with a well-defined and stable maritime boundary and Peru's coastal population with an equitable access to the marine resources of the disputed area.

CHAPTER III

PERU'S MARITIME ENTITLEMENTS UNDER INTERNATIONAL LAW

- 3.1 One of the main aspects of the present case is that Chile denies to Peru its entitlements to sovereignty or sovereign rights in and over important parts of the sea adjacent to its coasts.
- 3.2 In its Application, Peru's submission to the Court was set out in the following terms:

“Peru requests the Court to determine the course of the boundary between the maritime zones of the two States in accordance with international law, as indicated in Section IV above, 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.”

The purpose of the present chapter is to briefly explain, in general terms, Peru's entitlements in this respect. The precise limits of this maritime area will be discussed and justified in the next chapters of this Memorial.

- 3.3 It will be apparent that because they arise by virtue of the applicable principles of the international Law of the Sea accepted by Chile (Section I of this chapter), Peru's entitlements to an exclusive maritime domain (Section II) have been recognized by Chile as a matter of principle (Section III), even if, concretely, Chile refuses to accept the consequences of such a recognition.

I. Applicable Principles

- 3.4 It is appropriate to begin with a brief discussion of the applicable law. Peru is not a Party to the 1982 Convention on the Law of the Sea. Chile is a Party to the Convention, having ratified it on 25 August 1997⁷². With respect to the sources of law applicable to the present dispute under Article 38 of the Statute of the International Court of Justice, therefore, the main source of law is customary international law as principally developed by the case-law of this Court, and by international arbitral tribunals. Also relevant are the provisions of the 1982 Convention on the Law of the Sea dealing with the definition of the various maritime areas on which coastal States have particular entitlements and with maritime delimitation, which, although not applicable as treaty law *per se*, largely reflect customary international law.
- 3.5 As recently recalled by the Court, “the ‘land dominates the sea’ in such a way that coastal projections in the seaward direction generate maritime claims (*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, *Judgment*, *I.C.J. Reports 1969*, p. 51, para. 96)”⁷³.
- 3.6 As defined by Article 76 (1) of the 1982 Convention on the Law of the Sea:

“The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land

⁷² Chile made the following declaration: “In accordance with article 298 of the Convention, Chile declares that it does not accept any of the procedures provided for in part XV, section 2, with respect to the disputes referred to in article 298, paragraph 1(a), (b) and (c) of the Convention.” United Nations Division for Ocean Affairs and the Law of the Sea, *Law of the Sea Bulletin*, No. 35, p. 11.

⁷³ *Case Concerning Maritime Delimitation in the Black Sea*, *I.C.J. Judgment of 3 February 2009*, para. 99.

territory to the outer edge of the continental margin, *or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance*” (emphasis added).

3.7 It must be noted in this respect that the coasts of both Chile and Peru plunge rapidly into the very deep Peru-Chile trench, with the consequence that both countries have in the area in dispute a reduced continental shelf in the geomorphological meaning of the expression. But this of course does not imply that they are not entitled to a 200- nautical-mile continental shelf in the legal sense.

3.8 The sovereign rights belonging to the coastal State over its continental shelf “for the purpose of exploring it and exploiting its natural resources” (Article 77 (1)) –

“are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation” (Article 77 (2) and (3)).

3.9 This prompted the International Court of Justice to decide in its 1969 Judgment in the *North Sea Continental Shelf* cases that –

“the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here an inherent right. In order to exercise it, no special legal process has to be gone through, nor have any special legal acts to be performed. Its existence can be declared (and many

States have done this) but does not need to be constituted. Furthermore, the right does not depend on its being exercised. To echo the language of the Geneva Convention, it is ‘exclusive’ in the sense that if the coastal State does not choose to explore or exploit the areas of shelf appertaining to it, that is its own affair, but no one else may do so without its express consent.”⁷⁴

- 3.10 With respect to the column of water, Peru has consistently claimed an exclusive maritime domain extending to a distance of 200 nautical miles from its baselines, which is in line with the geographical extension and the purpose of the institution of the EEZ as set forth in Article 56 of the 1982 Convention on the Law of the Sea⁷⁵.

II. Peru’s Maritime Entitlements under General Principles of the Law of the Sea

- 3.11 As is well known, Peru (like Chile⁷⁶) has been a pioneer in the policy of claims which have led to the general acceptance of maritime rights in favour of the coastal State extending up to a distance of 200 nautical miles from its coasts. Thus, as early as 1 August 1947 – and following a similar declaration by Chile made on 23 June 1947⁷⁷ – Peru’s Supreme Decree No. 781⁷⁸ was

⁷⁴ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 22, para. 19; see also p. 29, para. 39; and *Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978*, p. 36, para. 86.

⁷⁵ According to Article 56 (1)(a), “In the exclusive economic zone, the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds”.

⁷⁶ See below, paras. 3.24 *ff.* below.

⁷⁷ Declaration by Chile of 23 June 1947. Annex 27.

⁷⁸ According to the Peruvian legal system, the hierarchy regarding norms issued by the Executive and Legislative branches consists of three levels, which are, in decreasing order of authority: (a) Constitutional status, (b) Law status, and (c) Regulation status. Law status is accorded to laws, legislative resolutions by Congress, legislative decrees (laws issued by the Executive by delegation from Congress) and treaties. Regulation status is given to the ordinary acts under the competence of the Executive expressed usually as supreme decrees or supreme resolutions.

adopted. This important instrument stated “[t]hat the continental submerged shelf forms one entire morphological and geological unit with the continent”⁷⁹ – but asserted a claim of 200 miles, which meant that the geographical extension of maritime rights claimed by Peru bore no relation with the continental shelf in its geomorphological definition. The scope of that extension was detailed in Article 3 by which Peru declared –

“that it will exercise the same 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.”⁸⁰

Spanish text reads as follows:

“que ejercerá dicho control y protección sobre el mar adyacente a las costas del territorio peruano en una zona comprendida entre esas costas y una línea imaginaria paralela a ellas y trazada sobre el mar a una distancia de doscientas (200) millas marinas, medida siguiendo la línea de los paralelos geográficos.”

3.12 A few years later, the Peruvian Petroleum Law No. 11780 of 12 March 1952 declared in Article 14 (4):

“Continental Shelf. This shall be the zone lying between the western limit of the coastal zone and an imaginary line drawn seaward at a constant distance of 200 miles from the low-water line along the continental coast.”⁸¹

⁷⁹ Preamble of Peru’s Supreme Decree No. 781 in Annex 6. (Spanish text: “[q]ue la plataforma submarina o zócalo continental forma con el continente una sola unidad morfológica y geológica”).

⁸⁰ Annex 6.

⁸¹ Annex 8.

Spanish text reads as follows:

“Zona Zócalo Continental.- Es la zona comprendida entre el límite occidental de la Zona de la Costa y una línea imaginaria trazada mar afuera a una distancia constante de 200 millas de la línea [de] baja marea del litoral continental.”

- 3.13 The Petroleum Law preceded by five months the 1952 Declaration of Santiago, by which Ecuador, Peru and Chile jointly reiterated their claims to have rights “over the sea along the coasts of their respective countries to a minimum distance of 200 nautical miles from these coasts.”⁸² For the present purpose, the importance of the 1952 Declaration is twofold in that *first*, it marks a shift away from unilateral acts to multilateral instruments; and *second*, as will be shown in more detail in the next section of this chapter, the Declaration evidences the recognition by Chile of the validity of Peru’s claim to exclusive maritime rights to a distance of not less than 200 nautical miles from the coast.
- 3.14 In 1958, Mr. Enrique García Sayán, delegate of Peru to the First United Nations Conference on the Law of the Sea, stated that the Peruvian Supreme Decree No. 781 of 1 August 1947 (which he had signed as Minister of Foreign Affairs) and the 1952 Declaration of Santiago “proclaimed that national sovereignty and jurisdiction extended to the continental shelf and its superjacent waters and to the adjacent sea to a distance of 200 nautical miles, for the purpose of conserving and utilizing all the resources in or below that area.”⁸³ He added that “[i]t was the absence of any international rules for the utilization of the sea as a source of riches that had led to the unilateral adoption of measures of self-defence.”⁸⁴

⁸² Para. II of the 1952 Declaration of Santiago. Annex 47. See paras. 3.29-3.30 below. The 1952 Declaration of Santiago will be further examined in para. 4.62 *ff.* below. (Spanish text: “sobre el mar que baña las costas de sus respectivos países, hasta una distancia mínima de 200 millas marinas desde las referidas costas.”).

⁸³ Statement by Peruvian Delegate, Mr. Enrique García Sayán, at the First United Nations Conference on the Law of the Sea, 13 March 1958, para 33. Annex 101.

⁸⁴ *Ibid.*, para. 34.

3.15 The 1952 Declaration of Santiago was followed by a great number of laws and regulations based on the 200-nautical-mile zone over which Peru claimed exclusive rights. They dealt with a broad range of activities, including those of an economic nature and the protection of living resources. Those laws and regulations included:

- Supreme Resolution No. 23 of 12 January 1955 (Article 1)⁸⁵;
- Law No. 15720 of 11 November 1965 on Civil Aeronautics (Article 2)⁸⁶;
- General Law on Waters, issued by virtue of Decree Law No. 17752 of 24 July 1969 (Article 4 (a))⁸⁷;
- Decree Law No. 18225 of 14 April 1970, providing for the adoption of the General Mining Law (Article 2)⁸⁸;
- General Fisheries Laws, issued by virtue of Law Decrees No. 18810 of 25 March 1971 (Article 1)⁸⁹, and No. 25977 of 7 December 1992 (Article 7)⁹⁰;
- Law No. 26620 of 30 May 1996 on the Control and Supervision of Maritime, Fluvial and Lacustrine Activities (Article 2 (a))⁹¹;
- Law No. 27261 of 9 May 2000 on Civil Aeronautics (Article 3)⁹²; and
- Supreme Decree No. 028-DE/MGP of 25 May 2001 on Regulation of the Law on the Control and Supervision of Maritime, Fluvial and Lacustrine Activities (Preliminary Section, Scope of Application, paragraph (a))⁹³.

⁸⁵ Annex 9.

⁸⁶ Annex 12.

⁸⁷ Annex 13.

⁸⁸ Annex 15.

⁸⁹ Annex 16.

⁹⁰ Annex 18.

⁹¹ Annex 20.

⁹² Annex 21.

⁹³ Annex 22.

- 3.16 At the highest legal level, Article 98 of the Peruvian Political Constitution of 1979 stated that:

“The maritime domain of the State comprises the sea adjacent to its coasts, as well as its seabed and subsoil up to a distance of two hundred nautical miles measured from the baselines established by law. In its maritime domain, Peru exercises sovereignty and jurisdiction, without prejudice to the freedom of international communications, pursuant to the law and the treaties ratified by the Republic.”⁹⁴

Spanish text reads as follows:

“El dominio marítimo del Estado comprende el mar adyacente a sus costas, así como su lecho y subsuelo, hasta la distancia de doscientas millas marinas medidas desde las líneas que establece la ley. En su dominio marítimo, el Perú ejerce soberanía y jurisdicción, sin perjuicio de las libertades de comunicación internacional, de acuerdo con la ley y los convenios internacionales ratificados por la República.”

- 3.17 The same principle can be found in Article 54 of the Political Constitution of 1993 according to which:

“The maritime domain of the State comprises the sea adjacent to its coasts, as well as its seabed and subsoil up to a distance of two hundred nautical miles measured from the baselines established by law.

In its maritime domain, the State exercises sovereignty and jurisdiction, without prejudice to the freedom of international communications, pursuant to the law and the treaties ratified by the State.

The State exercises sovereignty and jurisdiction over the airspace above its territory and adjacent sea up to the limit of two hundred nautical miles, without prejudice to the freedom of international

⁹⁴ Annex 17.

communications, pursuant to the law and the treaties ratified by the State.”⁹⁵

Spanish text reads as follows:

“El dominio marítimo del Estado comprende el mar adyacente a sus costas, así como su lecho y subsuelo, hasta la distancia de doscientas millas marinas medidas desde las líneas de base que establece la ley.

En su dominio marítimo, el Estado ejerce soberanía y jurisdicción, sin perjuicio de las libertades de comunicación internacional, de acuerdo con la ley y con los tratados ratificados por el Estado.

El Estado ejerce soberanía y jurisdicción sobre el espacio aéreo que cubre su territorio y el mar adyacente hasta el límite de las doscientas millas, sin perjuicio de las libertades de comunicación internacional, de conformidad con la ley y con los tratados ratificados por el Estado.”

- 3.18 In the words of the Preamble of the Peruvian Supreme Decree No. 047-2007-RE of 11 August 2007 approving the Chart of the Outer Limit – Southern Sector – of the Maritime Domain of Peru:

“Article 54 of the Peruvian Political Constitution establishes that the maritime domain of the State comprises the sea adjacent to its coasts, as well as its seabed and subsoil, up to a distance of two hundred nautical miles measured from the baselines established by law;

In compliance with the above mentioned Constitution and pursuant to international law, Law No. 28621 – Peruvian Maritime Domain Baselines Law was issued on 3 November 2005, from which the width of the maritime domain of the State is measured up to a distance of two hundred nautical miles;

⁹⁵ Art. 54, paras. 2-4 of the 1993 Political Constitution of Peru is included as Annex 6 to the Application. It is joined anew for the convenience of the Court as Annex 19.

Article 4 of said law provides that the outer limit of the maritime domain of Peru is traced in such a way that each point of the above mentioned outer limit is at a distance of 200 nautical miles from the nearest point of the baselines, in application of the delimitation criteria established by international law”⁹⁶.

Spanish text reads as follows:

“Que, el artículo 54° de la Constitución Política del Perú establece que el dominio marítimo del Estado comprende el mar adyacente a sus costas, así como su lecho y subsuelo, hasta la distancia de doscientas millas marinas medidas desde las líneas de base que establece la ley;

Que, en cumplimiento del citado dispositivo constitucional y de conformidad con el derecho internacional, se expidió la Ley N° 28621 – Ley de Líneas de Base del Dominio Marítimo del Perú, el 3 de noviembre del 2005, a partir de las cuales se mide la anchura del dominio marítimo del Estado hasta la distancia de doscientas millas marinas;

Que, el artículo 4° de la citada ley dispone que el límite exterior del dominio marítimo del Perú es trazado de modo que cada punto del citado límite exterior se encuentre a doscientas millas marinas del punto más próximo de las líneas de base, en aplicación de los criterios de delimitación establecidos por el derecho internacional”.

- 3.19 The map annexed to the 2007 Decree illustrates the maritime domain of Peru thus described. It is reproduced in **Figure 2.4** of this Memorial. It goes without saying that the fact it has indicated on this map the existence of an “area in dispute” (*área en controversia*) reflecting Chile’s claim does not prevent Peru from claiming a maritime domain extending up to a distance of 200 nautical miles from its coasts.

⁹⁶ Supreme Decree No. 047-2007-RE of 11 August 2007. Annex 24; Peru’s Baselines Law No. 28621. Annex 23.

- 3.20 Subject to the application of the rules relating to the delimitation of maritime areas between States with adjacent coasts, which will be further examined in Chapter VI below, Peru's maritime entitlements are simply a consequence of the existence – by virtue of the generally accepted principles of contemporary international law, as briefly described above in Section I – of exclusive sovereign rights of coastal States over maritime areas extending at least up to 200 nautical miles from the coast, independently of their geomorphology.
- 3.21 While fully conscious that Peru's claim to a 200-nautical-mile zone related to “aspects still undefined in international law, which are yet at a developing stage”⁹⁷, even in the 1950s the Peruvian authorities did not confine themselves to simply claiming rights over that area, they also enforced them. One of the most well known and publicized episodes of Peru's intention to have its sovereign rights respected in that zone was the seizure on June 1954 by the Peruvian Navy of whalers belonging to the *Olympic Whaling Company*, which was owned by Aristotle Onassis⁹⁸.
- 3.22 Admittedly, the various texts proclaiming the rights of Peru over a “maritime domain” extending up to 200 nautical miles did not use the expression “exclusive economic zone”. Nevertheless, it remains the case that those acts and declarations clearly attest to the will of the Peruvian Government to exercise its exclusive sovereign rights to protect its economic interests and the environment within that zone. As was aptly explained by former President

⁹⁷ Ministerio de Relaciones Exteriores: *Memoria del Ministro de Relaciones Exteriores (28 de Julio de 1954 - 28 de Julio de 1955)*. Lima, Talleres Gráficos P.L. Villanueva, 1955, p. 279. Annex 98. (Spanish text: “aspectos aún no definidos del Derecho Internacional que se hallan en etapa de desarrollo.”). See also the Agreement between Ecuador, Peru and Chile for a Joint Response to the United States and Great Britain on their Observations to the “Declaration of Santiago”, Lima, 12 April 1955. Annex 58; or the Peruvian Notes of 12 April 1955 to the United States (Note No. (M): 6/3/29). Annex 66; or to the United Kingdom (Note No. (N): 6/17/14 of 12 April 1955). Annex 65.

⁹⁸ On this episode, see paras. 4.83-4.85 below.

of Peru José Luis Bustamante y Rivero, who later became President of the International Court of Justice:

“The Peruvian proclamation of sovereignty over the waters of the new territorial sea or coastal strand of two-hundred miles in the decree of 1947, does not imply a purpose for the absolute appropriation of that zone, nor for the creation of an exclusive, and excluding, domain over it. The decree itself establishes that its dispositions do not affect the right to free navigation of ships of all flags. It implicitly conveys the idea ... that the acts of sovereignty that the Peruvian State performs over the area will be limited to the sole purposes of the proclamation, namely, the protection, preservation and defence of the natural resources therein, and hence, to the surveillance and regulation of those national economic interests.”⁹⁹

Spanish text reads as follows:

“La proclamación de la soberanía peruana sobre las aguas del nuevo mar territorial o faja costera de las doscientas millas en el decreto de 1947, no implica un propósito de apropiación absoluta de esa zona ni la creación de un dominio exclusivo y excluyente sobre ella. Ya el propio decreto se encarga de dejar establecido que sus disposiciones no afectan el derecho de libre navegación de los barcos de todas las naciones. E implícitamente deja entender, ... que los actos de soberanía que el Estado Peruano realice sobre la zona estarán limitados a los solos fines de la proclamación, esto es, a la protección, conservación y defensa de los recursos naturales allí existentes y, consiguientemente, a la vigilancia y reglamentación de esos intereses económicos nacionales.”

⁹⁹ Bustamante y Rivero, José Luis: *Las Nuevas Concepciones Jurídicas Sobre el Alcance del Mar Territorial (Exposición de Motivos del Decreto Supremo Expedido por el Gobierno del Perú el 1º de agosto de 1947)*, Lima, 1955, pp. 6-7. See also: Report of Foreign Affairs Committee of the Congress of the Republic of Peru of 4 May 1955, on the agreements and conventions signed by Peru, Chile and Ecuador in Santiago, on 18 August 1952; and in Lima, on 4 December 1954, *passim* but in particular, p. 2, para. 2. Annex 96; and Statement by Representative of Peru, Alberto Ulloa Sotomayor, United Nations, *Official Documents A/CONF.13/39*, Vol. III, Fifth Meeting, pp. 6-7.

- 3.23 There can therefore be no doubt that Peru is entitled to an exclusive maritime domain extending to a distance of 200 nautical miles from its baselines (as defined by Peru's Baselines Law¹⁰⁰) in conformity with the most basic principles of the contemporary Law of the Sea.

III. Chile Has Recognised as a Matter of Principle Peru's Maritime Entitlements to a Distance of 200 Nautical Miles from Its Coast

- 3.24 There is some irony in the fact that, while Chile too has been a pioneer in claiming for itself an exclusive maritime domain to a distance of 200 nautical miles from its coast and has vigorously maintained its own right to such a zone, and while it has formally paid lip service to Peru's similar entitlement to such a zone, Chile in fact refuses to accept the consequences of such an entitlement that should be drawn in favour of Peru.

- 3.25 Chile adopted as early as 23 June 1947 a Declaration by which it proclaimed –

“1° ... its national sovereignty over all the continental shelf adjacent to the continental and island coasts of its national territory, whatever may be their depth below the sea, and claims by consequence all the natural riches which exist on the said shelf, both in and under it, known or to be discovered.

[and]

2° ... over the seas adjacent to its coasts whatever may be their depths, and within those limits necessary in order to reserve, protect, preserve and exploit the natural resources of whatever nature found on, within and below the said seas, placing within the control of the government especially all fisheries and whaling activities with the object of preventing the exploitation of natural riches of this kind to the detriment of the inhabitants of Chile and to prevent the spoiling or destruction of the said riches to the detriment of the country and the American continent.

3° ... Protection and control is hereby declared immediately over all the seas contained within the perimeter formed by the

¹⁰⁰ Annex 23.

coast and the mathematical parallel projected into the sea at a distance of 200 nautical miles from the coasts of Chilean territory.”¹⁰¹

Spanish text reads as follows:

“1° El Gobierno de Chile confirma y proclama la soberanía nacional sobre todo el zócalo continental adyacente a las costas continentales e insulares del territorio nacional, cualquiera que sea la profundidad en que se encuentre, reivindicando, por consiguiente, todas las riquezas naturales que existen sobre dicho zócalo, en él y bajo él, conocidas o por descubrirse.

2° El Gobierno de Chile confirma y proclama la soberanía nacional sobre los mares adyacentes a sus costas, cualquiera que sea su profundidad, en toda la extensión necesaria para reservar, proteger, conservar y aprovechar los recursos y riquezas naturales de cualquier naturaleza que sobre dichos mares, en ellos y bajo ellos se encuentren, sometiendo a la vigilancia del Gobierno especialmente las faenas de pesca y caza marítimas, con el objeto de impedir que las riquezas de este orden sean explotadas en perjuicio de los habitantes de Chile y mermadas o destruidas en detrimento del país y del Continente americano.

3° ...declarándose ... dicha protección y control sobre todo el mar comprendido dentro del perímetro formado por la costa con una paralela matemática proyectada en el mar a doscientas millas marinas de distancia de las costas continentales chilenas.”

3.26 Noting “[t]hat international consensus of opinion recognizes the right of every country to consider as its national territory any adjacent extension of the epicontinental sea and the continental shelf”¹⁰², the Declaration further stated that Chile –

“does not disregard the similar legitimate rights of other States on a basis of reciprocity, nor does it affect the rights of free navigation on the high seas.”¹⁰³

¹⁰¹ Annex 27.

¹⁰² *Ibid.*, para. 4 of the Preamble. (Spanish text: “Que el consenso internacional reconoce a cada país el derecho a considerar como territorio nacional toda la extensión del mar epicontinental y el zócalo continental adyacentes.”).

¹⁰³ *Ibid.*, para. 4 of the operative provisions.

Spanish text reads as follows:

“no desconoce legítimos derechos similares de otros Estados sobre la base de reciprocidad, ni afecta a los derechos de libre navegación sobre la alta mar.”

3.27 Chile clearly accepts that all other States possess the same rights as those it claims off its coasts. In so doing, it accepted in advance that Peru is entitled to those very same rights.

3.28 The idea of a maritime zone extending up to a distance of 200 nautical miles from the coasts is present in many subsequent legal instruments enacted by Chile, *e.g.*:

- Decree No. 332 of 4 June 1963, issued by the Ministry of Agriculture Appointing the Authority which Grants Fishing Permits to Foreign Flag Vessels (Article 2)¹⁰⁴;
- Decree No. 453 of 18 July 1963, issued by the Ministry of Agriculture on the Regulation of Permits for the Exploitation by Factory Ships (Articles 1 and 3)¹⁰⁵;
- Law No. 18.565 of 13 October 1986 amending Article 596 of the Civil Code, regarding maritime spaces¹⁰⁶.

To give another example, in the “Salta Declaration” of 24 July 1971, Presidents Alejandro Lanusse of Argentina and Salvador Allende of Chile:

“Reaffirm the right of both countries to set, as they have done, their jurisdictions over the sea adjacent to their coasts up to a distance of 200 nautical miles, primarily taking into account the preservation and exploitation of the resources of the sea to the benefit of their peoples.”¹⁰⁷

¹⁰⁴ Annex 31.

¹⁰⁵ Annex 32.

¹⁰⁶ Annex 36.

¹⁰⁷ Annex 104. It should be noted that this was stated at a time when maritime delimitation between Chile and Argentina was still outstanding. See paras. 5.5-5.8 below.

Spanish text reads as follows:

“Reafirman el derecho de ambos países de fijar, como lo han hecho, sus jurisdicciones sobre el mar frente a sus costas hasta las 200 millas marinas, teniendo en cuenta primordialmente la preservación y explotación en beneficio de sus pueblos de los recursos del mar.”

- 3.29 Very consistently, the Chilean Government formally took the same position as regards the rights of Peru. The most striking example of a reciprocal recognition of the mutual entitlement to an exclusive maritime domain out to a distance of – at the time “not less than” – 200 nautical miles from their respective coasts is the 1952 Declaration of Santiago¹⁰⁸, in Article II of which –

“the Governments of Chile, Ecuador and Peru proclaim as a norm of their international maritime policy that they each possess exclusive sovereignty and jurisdiction over the sea along the coasts of their respective countries to a minimum distance of 200 nautical miles from these coasts.”¹⁰⁹

Spanish text reads as follows:

“los Gobiernos de Chile, Ecuador y Perú proclaman como norma de su política internacional marítima, la soberanía y jurisdicción exclusivas que a cada uno de ellos corresponde sobre el mar que baña las costas de sus respectivos países, hasta una distancia mínima de 200 millas marinas desde las referidas costas.”

¹⁰⁸ The instruments adopted by the Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific held in Santiago de Chile in 1952 comprise the 1952 Declaration of Santiago and the Joint Declaration concerning fishing problems in the South Pacific, in addition to the Agreement between Chile, Ecuador and Peru relating to the Organization of the Permanent Commission of the Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific and the Regulations for Maritime Hunting Operations in the Waters of the South Pacific.

¹⁰⁹ Annex 47.

- 3.30 The 1952 Declaration of Santiago was a clear, joint, continuation of the policy inaugurated by the Chilean and Peruvian instruments of 1947, which, although different in their details, had been adopted in the same spirit. This is strikingly apparent in the “Instructions given by the Minister of Foreign Affairs Mr. Manuel C. Gallagher to the Chairman of the Delegation of Peru, Dr. A. Ulloa, for the Signing of the ‘Declaration of Santiago’”:

“We know that the declaration of sovereignty over an extension of two hundred miles over the open sea is objected by the major powers who will not be able to use the same arguments in order to challenge a regulation and control measures which, without implying full exercise of sovereignty, will be agreed jointly by the three coastal States, for the purpose of protecting the resources of their sea that they have always used and that are now at risk of disappearing owing to uncontrolled or intensive fishing which has recently been started by foreigners whose new fishing methods may easily lead to the reduction of these natural resources, with obvious damage for the coastal States.”¹¹⁰

Spanish text reads as follows:

“Sabemos que la declaración de soberanía sobre una extensión de doscientas millas sobre el mar libre es objetada por las grandes potencias que no podrán usar los mismos argumentos para oponerse a una reglamentación y control, que, sin implicar pleno ejercicio de soberanía, acordaran en común los tres Estados ribereños, a fin de defender la riqueza de su mar que siempre han utilizado y que, ahora, está expuesta a desaparecer por la pesca incontrolada o intensiva que se ha empezado a llevar a cabo recientemente por extranjeros cuyos nuevos métodos de pesca pueden llevar fácilmente a la merma de esos recursos naturales, con daño evidente para los Estados ribereños.”

¹¹⁰ “Instructions given by the Minister of Foreign Affairs Mr. Manuel C. Gallagher to the Chairman of the Delegation of Peru, Dr. A. Ulloa, for the Signing of the ‘Declaration of Santiago’”, Lima, July 1952. Annex 91; also reproduced in Bákula, Juan Miguel: *El Dominio Marítimo del Perú*, Lima, Fundación M.J. Bustamante de la Fuente, 1985, pp. 89-90.

3.31 Again, in the Complementary Convention to the Declaration of Sovereignty on the Two-Hundred-Mile Maritime Zone adopted in Lima on 4 December 1954¹¹¹ (hereinafter “the 1954 Complementary Convention”), the three countries, recalling that they –

“have proclaimed their Sovereignty over the sea along the coasts of their respective countries, up to a minimum distance of two hundred nautical miles, from the said coasts, including the corresponding soil and subsoil of said Maritime Zone”,

Spanish text reads as follows:

“han proclamado su Soberanía sobre el mar que baña las costas de sus respectivos países, hasta una distancia mínima de 200 millas marinas, desde las referidas costas, incluyéndose el suelo y subsuelo que a esa Zona Marítima corresponde”,

agreed that:

“Chile, Ecuador and Peru shall proceed by common accord in the legal defence of the principle of Sovereignty over the Maritime Zone up to a minimum distance of 200 nautical miles, including the soil and subsoil thereof.”¹¹²

Spanish text reads as follows:

“Chile, Ecuador y Perú, procederán de común acuerdo en la defensa jurídica del principio de la Soberanía sobre la Zona Marítima hasta una distancia mínima de 200 millas marinas, incluyéndose el suelo y subsuelo respectivos.”

¹¹¹ Again, this Complementary Convention to the 1952 Declaration of Santiago adopted by the Lima Conference in December 1954 is only part of a complex pattern of legal instruments adopted jointly, comprising the Convention on the System of Sanctions; the Convention on Measures on the Surveillance and Control of the Maritime Zones of the Signatory Countries; the Convention on the Granting of Permits for the Exploitation of the Resources of the South Pacific; the Convention on the Ordinary Annual Meeting of the Permanent Commission for the South Pacific (for Whaling Activities); and the 1954 Agreement on a Special Zone.

¹¹² 1954 Complementary Convention, *Preamble*, Art. 1. Annex 51.

3.32 Thus, Chile not only reiterated its recognition of Peru's rights over a maritime domain of 200 nautical miles, but it also expressed its will to co-operate with Ecuador and Peru for the defence of this zone.

3.33 Chile and Peru again took the same position on a bilateral basis in a Joint Declaration of 3 September 1971, drafted on the model of the Salta Declaration, in which Presidents Salvador Allende of Chile and Juan Velasco Alvarado of Peru reaffirmed –

“as an inalienable objective of their maritime policies the defence of the inherent right of a coastal State to the full exercise of its exclusive sovereignty and jurisdiction up to a distance of 200 miles, in order to regulate the conservation and use of natural resources of the sea adjacent to their coasts, and the soil and subsoil thereof, as well as the right within its respective jurisdiction to adopt the necessary measures for the preservation of the marine environment and the management of scientific research activities, in order to protect the interests and promote the development and well-being of its peoples.

They renew their support to the 1952 Declaration of Santiago on Maritime Zone ...

They agree to strengthen the System of the South Pacific and its legal, scientific and technical works, consolidate the solidarity among the countries that have adopted the 200-mile limit, and actively promote the establishment of a Latin American regional system that ensures the respect for their rights and a closer collaboration on this area of vital interest to their peoples.”¹¹³

Spanish text reads as follows:

“como objetivo irrenunciable de sus políticas marítimas la defensa del derecho inherente del Estado ribereño al pleno ejercicio de su soberanía y jurisdicción exclusivas hasta la distancia de 200 millas, para regular la conservación y

¹¹³ Annex 105. See also the Joint Declaration of 16 June 1978 adopted by the Ministers of Foreign Affairs of both countries. Annex 106.

aprovechamiento de los recursos naturales del mar adyacente a sus costas, y del suelo y subsuelo del mismo mar, así como el derecho dentro de su respectiva jurisdicción a adoptar las medidas necesarias para la preservación del medio ambiente marino y la conducción de las actividades de investigación científica, con el fin de proteger los intereses y promover el desarrollo y el bienestar de sus pueblos.

Renuevan su respaldo a la Declaración de Santiago de 1952 sobre Zona Marítima ...

Acuerdan fortalecer el Sistema del Pacífico Sur y sus trabajos jurídicos, científicos y técnicos, consolidar la solidaridad entre los países que han adoptado el límite de 200 millas, y promover activamente el establecimiento de un sistema regional latinoamericano que asegure el respeto de sus derechos y una más estrecha colaboración en este campo de vital interés para sus pueblos.”

- 3.34 It is also worth noting that on 14 August 2002, on the occasion of the fiftieth anniversary of the 1952 Declaration of Santiago, the representatives of Chile, Colombia, Ecuador and Peru, adopted a new Declaration in which it was said that they:

“1. Express their satisfaction and pride in celebrating the fiftieth anniversary of the Declaration of Santiago which sanctioned the principle of two hundred nautical miles, which has generalised in the practice of States, as an essential part of the Law of the Sea.

2. They pay tribute to the developers of the principles contained in the 1952 ‘Declaration of Santiago’, who proclaimed for the first time a two hundred-mile maritime jurisdictional zone, based on economic and conservation grounds, and who were tasked with defending the recognition of said zone in multiple international forums up to its sanction in the new Law of the Sea.

...

5. They reaffirm, in this sense, the legal authority of their States to exercise their sovereign rights in the 200-mile jurisdictional

zone, and to issue the necessary measures for the exploration, exploitation, conservation and administration of the resources found therein, in conformity with the universally accepted instruments and practices, with special reference to the United Nations Convention on the Law of the Sea. Likewise, they reiterate their sovereign rights over their ports and the preferential rights they are entitled to, where appropriate, in the high seas.”¹¹⁴

Spanish text reads as follows:

“1. Expresan su satisfacción y orgullo al celebrar cincuenta años de la Declaración de Santiago que consagró el principio de las doscientas millas marinas, el que se ha universalizado en la práctica de los Estados, como parte esencial del Derecho del Mar.

2. Rinden un sentido homenaje a los forjadores de los principios contenidos en la ‘Declaración de Santiago’ de 1952, quienes proclamaron por primera vez una zona marítima jurisdiccional de doscientas millas, con fundamentos económicos y de conservación y, a quienes les correspondió defender su reconocimiento en múltiples foros internacionales hasta llegar a su consagración en el Nuevo Derecho del Mar.

...

5. Reafirman en tal sentido la potestad de sus Estados en la zona jurisdiccional de 200 millas de ejercer derechos soberanos en ella y dictar las medidas necesarias para la exploración, explotación, conservación y administración de los recursos que en ella se encuentran, de conformidad con los instrumentos y prácticas universalmente aceptados, con especial referencia a la Convención de las Naciones Unidas sobre el Derecho del Mar. Asimismo reiteran su derecho soberano sobre sus puertos y los derechos preferenciales que les corresponden, en su caso, en la alta mar.”

3.35 In contrast to these constant proclamations that all States – including Peru – enjoy sovereign and exclusive rights over a 200-nautical-mile zone, Chile now denies such rights to Peru by trying to whittle away the geographical

¹¹⁴ Annex 112.

extent of the area over which Peru possesses such rights. Chile's position results not only in excessive Chilean claims in respect to the delimitation of its lateral maritime boundary with Peru, but also in the denial by Chile of the rights of Peru over an area which lies less than 200 nautical miles from the Peruvian coasts but more than 200 nautical miles from the Chilean coasts, this is to say, over a zone that, in any case, lies outside the area claimed by Chile as its EEZ. Thus, on 12 September 2007, the Chilean Government issued a statement by which it expressed its disagreement with the abovementioned Peruvian Supreme Decree No. 047-2007-RE of 12 August 2007 and with the map attached to it¹¹⁵, and protested against the alleged "intent" of these instruments "to attribute to Peru a maritime area, which is fully subject to the sovereignty and sovereign rights of Chile, as well as an adjacent area of the High Seas."¹¹⁶

- 3.36 In any case, the very expression "*exclusive economic zone*" implies that only the coastal State may claim the "sovereign rights" defined in Article 56 (1) of the 1982 Convention on the Law of the Sea, to the "exclusion" of all other States – and this in an area which, in the absence of any competing claim, extends to a distance of "200 nautical miles from the baselines from which the breadth of the territorial sea is measured" (Article 57). As a consequence, even if no formal proclamation of an EEZ is made, the entitlement to an EEZ operates at least negatively in that no other State than the coastal State can claim such a zone for its own benefit, up to the distance of 200 nautical miles from the coast (except when the claims of two or more coastal States overlap within this limit – a circumstance in which the general rules of delimitation then apply (see Chapter VI below)).

¹¹⁵ See **Figure 2.4** in Chapter II of this Memorial.

¹¹⁶ Annex 114.

CHAPTER IV

LACK OF AN AGREEMENT ON MARITIME DELIMITATION

I. Introduction

- 4.1 The Parties differ fundamentally on the question of the existence of a maritime boundary between them. Peru's position is solidly based on the absence of any kind of agreement on maritime boundary delimitation with Chile. Chile's position, on the other hand, has been spelled out clearly in recent years and is based on the proposition that the 1952 Declaration of Santiago and the 1954 Agreement on a Special Zone settled the maritime delimitation.
- 4.2 For example, in Note No. 76 of 13 September 2005, the Ministry of Foreign Affairs of Chile affirmed that –

“the 1954 Agreement relating to a Special Maritime Frontier Zone, adopted in the framework of the South Pacific System, is precisely a binding instrument between Peru and Chile which refers to the existing maritime boundary and its full enforcement cannot be put into question”¹¹⁷.

Spanish text reads as follows:

“el Convenio sobre Zona Especial Fronteriza Marítima de 1954, adoptado en el ámbito del Sistema del Pacífico Sur, es

¹¹⁷ Note No. 76 of 13 September 2005, from the Ministry of Foreign Affairs of Chile to the Embassy of Peru. Annex 84.

precisamente un instrumento vinculante entre el Perú y Chile que se refiere al límite marítimo existente y su plena aplicación no puede ser puesta en duda”.

- 4.3 And in Note No. 18934 of 28 November 2005, the Government of Chile stated that –

“the 1952 Declaration of Santiago and the 1954 Agreement relating to a Special Maritime Frontier Zone – both of which are in force – settle the maritime delimitation between Chile and Peru at the geographical parallel”¹¹⁸.

Spanish text reads as follows:

“la Declaración de Santiago de 1952, y el Convenio sobre Zona Especial Fronteriza Marítima de 1954, ambos en vigor, establecen la delimitación marítima entre Chile y Perú en el paralelo geográfico”.

- 4.4 It is Peru’s case that the 1952 and 1954 instruments show nothing of the kind. Neither the 1952 Declaration of Santiago nor the 1954 Agreement on a Special Zone fixed a maritime boundary between Peru and Chile. No other agreement does so. A provisional line has long been used to delimit Peruvian and Chilean waters for policing purposes, particularly in relation to fisheries; but that line was not intended to have and does not have the character of an international maritime boundary. It was a policing limit established in what was then the territorial sea and an adjacent area of high seas within which the States Parties to the 1954 Agreement on a Special Zone claimed a limited functional jurisdiction in respect of fisheries. The boundary between the maritime zones of Peru and Chile remains to be settled, and that is the task now before the Court.

¹¹⁸ Note No. 18934 of 28 November 2005, from the Minister of Foreign Affairs of Chile to the Ambassador of Peru. Annex 85.

4.5 The existence of this dispute has long been evident. It was brought to the fore in 1986 when Peru approached Chile and proposed the making of an agreement on the maritime boundary¹¹⁹. It has also been the subject of many exchanges since then. For instance, in September 2000 Chile deposited charts with the Secretary-General of the United Nations which purported to identify a maritime boundary with Peru¹²⁰. On 9 January 2001 Peru wrote to the Secretary-General in protest, stating that:

“To date Peru and Chile have not concluded a specific maritime delimitation treaty pursuant to the relevant rules of international law. The mention of parallel 18°21'00" as the maritime boundary between the two States is, therefore, without legal basis.”¹²¹

4.6 In order to demonstrate Chile’s mischaracterization of the provisional policing line, and to make clear the precise juridical nature of the various instruments and practical arrangements that have been adopted by the two States over the years in respect of the waters in the general area of the starting-point of their land boundary, it is necessary to explain the relevant legal history in some detail. Accordingly, this chapter sets out that history and explains its significance in the context of the present dispute.

4.7 It is also necessary to offer a word of caution at this stage. There is a risk that the natural tendency to reinterpret the past in the light of the present may distort the evaluation of the historical record. For example, it is often overlooked that the making of maritime boundary agreements is a relatively recent phenomenon: more than 95% of maritime boundary treaties were concluded after the First United Nations Conference on the Law of the Sea

¹¹⁹ See paras. 4.132-4.133 below.

¹²⁰ See **Figure 2.6** in Vol. IV. See also the list of geographical co-ordinates deposited by Chile with the Secretary-General of the United Nations, in Annex 110.

¹²¹ Note No. 7-1-SG/005 of 9 January 2001, from the Permanent Mission of Peru to the Secretary-General of the United Nations. “Statement by the Government of Peru concerning parallel 18°21'00”, referred to by the Government of Chile as the maritime boundary between Chile and Peru”. Annex 78.

in 1958¹²². It was very rare for States to make such agreements in the 1940s and 1950s (or earlier). So, no matter how commonplace such agreements may appear today it would have been unusual and remarkable if the two States had made an agreement on the maritime boundary in the 1950s. Similarly, there is a danger that the well-established 200-mile zones of the present day may be assumed to have sprung, fully-formed, into existence in the late 1940s. That, too, would be a fundamental historical error. For much of that period – prior, that is, to the clinching of the ‘package-deal’ that was the 1982 Convention on the Law of the Sea – the 200-nautical-mile claims of the American South Pacific States were vigorously opposed by States outside the region, and the main concern was to secure the survival of the claims. Questions of intra-regional boundaries were not of immediate concern.

4.8 This chapter accordingly adopts a chronological approach, explaining developments in the context in which they actually occurred. It describes the dealings by the Parties in so far as they are relevant to the question of the maritime boundary. Those dealings were all reactions to the pressure of immediate events, foremost among which was the refusal of certain States whose vessels fished off the coasts of the American South Pacific States to recognize the validity of the 200-mile claims made by those American States.

4.9 The key characteristics of those dealings that are relevant in this context are –

(a) that the primary focus of the Parties was not upon the establishment of separate national zones but upon the defence of an American South Pacific maritime zone against opposition from third States at a time when the

¹²² D. M. Johnston: *The Theory and History of Ocean Boundary-Making*. Kingston, McGill-Queen’s University Press. 1988, p. 213: “Prior to the Second World War relatively few delimitation agreements were concluded: most sources refer to only two territorial sea boundary agreements – between Denmark and Sweden ... and between Italy and Turkey, both concluded in 1932. Significantly, the first “early modern” ocean boundary treaty, concluded ten years later by Venezuela and the United Kingdom (for Trinidad and Tobago), concerned the delimitation of the continental shelf. In the following twenty-two years only six more ocean boundary agreements were negotiated.”

Law of the Sea had not yet developed firm and universally-accepted rules on the extent of a coastal State's maritime rights beyond the territorial sea;

- (b) that the arrangements made between the Parties were provisional;
- (c) that the arrangements made between the Parties were intended only to regulate certain specific functions and not to divide up areas of ocean space;
- (d) that their purpose and effect was confined to a range of very specific fisheries matters, and in particular to the prevention of incursions into the fishing grounds off the coasts of Peru and Chile by foreign fishing vessels, and into their maritime zones more generally; and
- (e) that the arrangements were exclusively concerned with areas in the vicinity of the coast.

- 4.10 The main point made here is that while both Peru and Chile made various provisional maritime claims and arrangements for very specific purposes, there has as yet been no agreement between Peru and Chile fixing the boundary between their maritime zones. The maritime boundary remains to be determined by the Court in accordance with the applicable principles of international law.

II. The Maritime Claims

- 4.11 The maritime claims of Peru and Chile fall into three natural periods. The first is the period up to 1945, before the expanded claims made in and following the Truman Proclamations of 1945. The second is the period from 1945 up to 1980, during which time 200-mile claims remained contentious and had not gained general acceptance among traditional "maritime States" such as the United States, the Soviet Union, and many European States. The third is the period after 1980, when developments at UNCLOS III indicated that the 200-nautical-mile zone was practically certain to be a central element of the new legal regime then being negotiated at the Conference.

A. PHASE 1: MARITIME CLAIMS PRIOR TO 1945

- 4.12 Prior to 1945, the maritime claims of Peru and Chile were modest, and varied in their geographical extent according to the purpose for which they were established.

1. Peru's Maritime Claims

- 4.13 As was the common practice, Peru did not draw a crude distinction between a single unified zone of sovereignty over coastal waters and the high seas beyond. Peru's territorial sea was not a single integrated zone which determined the limits of Peruvian jurisdiction for all purposes. There were other zones which coexisted with Peru's territorial sea. Peru exercised its right to legislate over coastal waters from time to time and within various distances from the shore, as particular maritime interests appeared to require.
- 4.14 For example, the question of the limits of criminal law jurisdiction at sea was addressed by the First South American Congress on Private International Law held in Montevideo in 1888-89. The Congress adopted the 1889 Treaty on International Penal Law and this was enacted into law in Peru by virtue of the legislative approval of 4 November 1889. Article 12 of the 1889 Treaty on International Penal Law stipulated that:

“For purposes of jurisdiction, territorial waters are declared to be those comprised in a belt five miles wide running along the coast, either of the mainland or of the islands which form part of the territory of each State.”¹²³

Spanish text reads as follows:

“Se declaran aguas territoriales, a los efectos de la jurisdicción penal, las comprendidas en la extensión de cinco millas desde la costa de tierra firme e islas que forman parte del territorio de cada Estado.”

¹²³ Annex 44.

Thus, Peru had a five-mile territorial sea for the purposes of criminal law jurisdiction.

- 4.15 In contrast, Peru's Supreme Decree of 13 November 1934, Regulation on Visits and Stay of Warships and Military Aircraft in Peruvian Ports and Peruvian Territorial Waters in Times of Peace, established in paragraph 9.1 that:

“The territorial waters of Peru extend up to three miles from the coasts and islands, starting from the low tide lines”.¹²⁴

Spanish text reads as follows:

“Las aguas territoriales del Perú, se extienden hasta tres millas de las Costas e Islas, contadas a partir del límite de las más bajas mareas.”

- 4.16 Similarly, the Regulation of Captaincies and National Merchant Navy (General Order of the Navy No. 10), dated 9 April 1940, stated in Article 4 that:

“The territorial sea of Peru extends up to three miles from the coast and islands, measured from the lowest tide lines.”¹²⁵

Spanish text reads as follows:

“El mar territorial del Perú, se extiende hasta 3 millas de la costa e islas, contadas a partir de las más bajas mareas.”

- 4.17 Peru's claim to control maritime airspace was different yet again. Supreme Decree of 15 November 1921 asserted in its Preamble that:

“The State has, theoretically, absolute right of ownership on the air space over its territory, and that, in practice, it is essential for the State to exert sovereignty over its use, at least, up to where its rights of self-preservation and security demand”.¹²⁶

¹²⁴ Annex 4.

¹²⁵ Annex 5.

¹²⁶ Annex 3.

Spanish text reads as follows:

“Que el Estado tiene, teóricamente, derecho absoluto de propiedad sobre el espacio aéreo que domina su territorio, y que, en la práctica es indispensable que ejerza la soberanía de su empleo, por lo menos, hasta donde sus derechos de conservación y seguridad lo exijan”.

The Supreme Decree proceeded to stipulate in Article 1 that:

“Air navigation in balloons, airships or airplanes, of public or private property, arriving from other countries, is forbidden in less than three thousand metres over any part of the national territory and over the protection zone, constituted by a belt of twelve thousand metres [6.5 nautical miles approximately] from its coasts or from its defence installations built on its maritime shores or river banks.”¹²⁷

Spanish text reads as follows:

“La navegación aérea, en globos, dirigibles, o aviones de propiedad pública o particular, procedente, de otro país, queda prohibida a menos de tres mil metros sobre cualquiera de las partes del territorio nacional y sobre la zona de protección, constituida por una faja de doce mil metros a contar de sus costas, o de las obras de defensa instaladas sobre sus riberas marítimas o fluviales.”

- 4.18 It will readily be seen that, through into the 1940s, Peru maintained a number of claims to maritime jurisdiction, out to distances which varied according to the interest protected by the particular claim in question.

¹²⁷ *Ibid.*

2. Claims of Other States

4.19 Peru was by no means exceptional in this respect. Chile, for instance, adopted the same approach. Thus, Article 593 of the 1855 Chilean Civil Code¹²⁸, stipulated that:

“The adjacent sea, up to a distance of one marine league [three nautical miles], measured from the low-water mark, constitutes the territorial sea and belongs to the public domain; save that the right of policing, with respect to matters concerning the security of the country and the observance of fiscal laws, extends up to a distance of four marine leagues [12 nautical miles], measured in the same manner.”¹²⁹

Spanish text reads as follows:

“El mar adyacente, hasta la distancia de una legua marina, medida desde la línea de más baja marea, es mar territorial y de dominio nacional; pero el derecho de policía, para objetos concernientes a la seguridad del país y a la observancia de las leyes fiscales, se extiende hasta la distancia de cuatro leguas marinas medidas de la misma manera.”

A similar provision, setting a three-mile territorial sea and a 12-mile limit for national security purposes, was included in Chile’s Supreme Decree (M) No. 1.340, of 14 June 1941¹³⁰. Article 3 of Law No. 8.944, Chilean Water Code of 1948, on the other hand, provided that:

“The adjacent sea, up to a distance of 50 kilometres, measured from the lowest water line, is territorial sea of national domain; however, the right of policing for purposes regarding national security and the compliance of fiscal laws shall extend up to the distance of one hundred kilometres measured in the same manner.”¹³¹

¹²⁸ The 1855 Chilean Civil Code entered into force in 1857. Annex 25.

¹²⁹ This Article was amended by Law No. 18.565 of 13 October 1986 (Art. 1). Annex 36.

¹³⁰ Annex 26.

¹³¹ Annex 28.

Spanish text reads as follows:

“El mar adyacente, hasta la distancia de 50 kilómetros, medida desde la línea de más baja marea, es mar territorial y de dominio nacional; pero el derecho de policía, para objetos concernientes a la seguridad del país y a la observancia de las leyes fiscales, se extiende hasta la distancia de cien kilómetros medidos de la misma manera.”

In 1953, Chile adopted a 12-mile limit for the competence of the Directorate General of Maritime Territory and Merchant Marine, which had responsibility for navigational safety and the protection of human life at sea, as well as policing Chilean waters¹³².

4.20 It was also a common practice among other Latin American States in the first stage of the twentieth century to establish different maritime zones for specific purposes. Among the better-known examples are the following¹³³:

(a) Brazil: In 1914 issued a Circular Note No. 43 sanctioning a three-mile neutrality zone equivalent to the provisional extent of the territorial sea. According to Law Decree No. 794 of 1938, (Fishing Code), Brazil considered a 12-mile zone for fishery purposes.

(b) Colombia: According to Law No. 14 of 1923, “territorial sea” as referred to in Law No. 120 of 1919, Law on Hydrocarbons, and Law No. 96 of 1922, Conferring Powers upon the Government to Regulate Fishing in the Waters of the Republic, shall be understood to extend up to 12 nautical miles. Customs Law No. 79 of 1931¹³⁴, however, established a 20-kilometre jurisdiction zone.

¹³² Decree with Force of Law No. 292 of 25 July 1953, Fundamental Law of the Directorate General of Maritime Territory and Merchant Marine. Annex 29.

¹³³ The information was obtained from the United Nations Legislative Series. *Laws and Regulations on the Regime of the Territorial Sea*, UN Pub. Sale No. 1957 Vol. 2. (ST/LEG/SER. B/6). When other sources were used, individual references are made.

¹³⁴ Law No. 79, Organic Customs Law of Colombia of 19 June 1931 <<http://www.lexbasecolombia.com/lexbase/normas/leyes/1931/L0079de1931.htm>> accessed 24 November 2008.

- (c) Costa Rica: By virtue of Law Decree No. 116 of 1948, Costa Rica asserted its rights and interests over the seas adjacent to its territory up to the breadth required for the protection, preservation and rational exploitation of its natural resources. According with Law Decree No. 803 of 1949, demarcation was to be traced as far as 200 miles offshore¹³⁵.
- (d) Cuba: The Code for Social Defence of 1936 determined that for all crimes and infringements committed in the national territory, territorial waters should be considered to extend up to a distance of three nautical miles from shore. The Organic Law of the Army and Navy, approved by Law Decree No. 7 of 1942, claimed a three-mile territorial sea, but a zone extending as far as 12 miles offshore for customs purposes.
- (e) Dominican Republic: According to Law No. 3342 of 1952, the territorial sea extended for three miles offshore, but with an additional zone reaching as far as 12 nautical miles for the purposes of security, customs, fishery and sanitary regulations.
- (f) Ecuador¹³⁶: The 1857 Civil Code established a one maritime league (three miles) territorial sea. It also set a patrolling zone of up to four maritime leagues (12 miles). In 1934, by virtue of Executive Decree No. 607, Ecuador established a 15 mile zone as “territorial waters for fishery zones”. This norm was reasserted through Supreme Decree No. 80 of 1938. By virtue of Supreme Decree No. 53 of 1939, Ecuador established a “Maritime Safety Zone Adjacent to the Ecuadorean Territory” of 250 to 300 miles, while Supreme Decree No. 138 of 1940 and Executive Decree No. 1693 of 1946 established a 15-mile territorial sea for general fishery purposes.

¹³⁵ Law Decrees No. 116 of 27 July 1948 and No. 803 of 2 November 1949. United Nations Legislative Series. *Laws and Regulations on the Regime of the High Seas*. UN Pub. 1951 (ST/LEG/SER. B/1), pp. 9-10.

¹³⁶ Comisión Permanente del Pacífico Sur, Secretaría General: *Legislación Marítima y Pesquera vigente y otros documentos referentes al Derecho del Mar – Ecuador*. Santiago, December 1974, pp. 117-118, 127-130.

- (g) El Salvador: In accordance with the Navigation and Maritime Act of 1933, the national domain included a maritime zone of one maritime league (three nautical miles). That Act also established police, fiscal and security rights up to a distance of four maritime leagues (12 nautical miles).
- (h) Guatemala: Law of 10 June 1934 claimed a 12-mile territorial sea. Decree No. 2393 of 1940 established that no belligerent submarine could enter territorial waters, with these extending up to 12 miles.
- (i) Mexico: According to the General Law of National Patrimony of 1941 the territorial sea extended for 16,668 metres (nine miles) offshore. The same law established that Mexico could exert the police or defensive measures it would deem appropriate in a zone adjacent to the territorial sea, reaching as far as the distance fixed by special laws¹³⁷.

4.21 The overall picture was well summarized by Judge Alvarez in his Individual Opinion in the Anglo-Norwegian Fisheries case in 1951. He said:

“5. States may fix a greater or lesser area beyond their territorial sea over which they may reserve for themselves certain rights: customs, police rights, etc.

6. The rights indicated above are of great weight if established by a group of States, and especially by all the States of a continent.

The countries of Latin America have, individually or collectively, reserved wide areas of their coastal waters for specific purposes: the maintenance of neutrality, customs’ services, etc., and, lastly, for the exploitation of the wealth of the continental shelf.”¹³⁸

¹³⁷ García Robles, Alfonso: *La Conferencia de Ginebra y la Anchura del Mar Territorial*. Mexico, 1959, p. 407.

¹³⁸ *Fisheries case, Individual opinion of Judge Alvarez, I.C.J. Reports 1951*, p. 150.

B. PHASE 2: MARITIME CLAIMS 1945-1980

1. *The Background to the Claims of 1947*

- 4.22 States often make maritime claims. The *Law of the Sea Bulletin*, published by the United Nations Division for Ocean Affairs and the Law of the Sea, now records many such claims each year. But the claims made by Chile and Peru in 1947 were of a very different nature from most of the claims now being recorded in the *Law of the Sea Bulletin*.
- 4.23 The crucial difference is that the claims being made by States around the world now are, almost without exception, exercises by States of rights that are clearly recognized in the 1982 Convention on the Law of the Sea. It provides a comprehensive and authoritative account of the maritime zones to which States are entitled under the Convention and, indeed, under customary international law. Current claims are uncontroversial implementations at national level of rights the entitlement to which is well recognized in international law.
- 4.24 The 200-mile claims made prior to 1980 were quite different, in three respects. *First*, they were made against a legal background which was still in the making. It is now well established that maritime claims are divided into zones of sovereignty (the territorial sea), and zones of limited functional jurisdiction or sovereign rights exercisable for certain purposes specified by international law (the contiguous zone, the continental shelf, and the EEZ). That is, however, a position that has been reached only in recent years. In 1945 there were, as was explained in the preceding paragraphs in relation to Peru and Chile¹³⁹, many claims that did not fit within this simple classification. Rather than establish a rigid distinction between a territorial sea and a contiguous zone, for instance, many States claimed just so much maritime jurisdiction

¹³⁹ Paras. 4.12-4.21 above.

as they needed for practical purposes, leading to a situation in which various zones of different breadths were established for different purposes¹⁴⁰. The 200-mile claims were a further, pragmatic, addition to these bundles of maritime competences claimed by States, rather than a monolithic extension of the State's maritime 'territory'.

- 4.25 *Second*, the 200-mile claims were radically innovative, in as much as they extended for distances far beyond the very widest claims to maritime jurisdiction previously existing, and were resisted by some of the major 'maritime' States, such as the United States, the Soviet Union and several European States.
- 4.26 *Third*, the modern Law of the Sea, developing from the Truman Proclamations, included a new element which provided the impulse for the extension of maritime claims beyond their previously accepted limits: the socio-economic factor. This was evident in the 1947 200-mile claims of Chile and Peru and the 1952 Declaration of Santiago. The Chilean Proclamation referred to "the object of preventing the exploitation of natural riches of this kind to the detriment of the inhabitants of Chile"¹⁴¹; and the Peruvian Supreme Decree stated that "the shelf contains certain natural resources which must be proclaimed as our national heritage" and that –

"in defence of national economic interests it is the obligation of the State to determine in an irrefutable manner the maritime domain of the Nation, within which should be exerted the protection, conservation and vigilance of the aforesaid resources"¹⁴².

¹⁴⁰ This is evident from the responses of States to the League of Nations codification efforts in relation to the Law of the Sea. See García Robles, Alfonso, *op. cit.*, p. 64. See also Lowe, A.V.: "The Development of the Concept of the Contiguous Zone". (*British Yearbook of International Law*, Vol. 52, 1981, pp. 109-169).

¹⁴¹ Annex 27. (Spanish text: "con el objeto de impedir que las riquezas de este orden sean explotadas en perjuicio de los habitantes de Chile").

¹⁴² Annex 6.

Spanish text reads as follows:

“en resguardo de los intereses económicos nacionales, es obligación del Estado fijar de una manera inconfundible el dominio marítimo de la Nación, dentro del cual deben ser ejercitadas la protección, conservación y vigilancia de las riquezas naturales antes aludidas”.

The Declaration of Santiago was even more explicit, stating:

“1. Governments have the obligation to ensure for their peoples the necessary conditions of subsistence, and to provide them with the resources for their economic development.

2. Consequently, they are responsible for the conservation and protection of their natural resources and for the regulation of the development of these resources in order to secure the best possible advantages for their respective countries.

3. Thus, it is also their duty to prevent any exploitation of these resources, beyond the scope of their jurisdiction, which endangers the existence, integrity and conservation of these resources to the detriment of the peoples who, because of their geographical situation, possess irreplaceable means of subsistence and vital economic resources in their seas.”¹⁴³

Spanish text reads as follows:

1. Los Gobiernos tienen la obligación de asegurar a sus pueblos las necesarias condiciones de subsistencia, y de procurarles los medios para su desarrollo económico.

2. En consecuencia, es su deber cuidar de la conservación y protección de sus recursos naturales y reglamentar el aprovechamiento de ellos a fin de obtener las mejores ventajas para sus respectivos países.

¹⁴³ Annex 47.

3. Por lo tanto, es también su deber impedir que una explotación de dichos bienes, fuera del alcance de su jurisdicción, ponga en peligro la existencia, integridad y conservación de esas riquezas en perjuicio de los pueblos que, por su posición geográfica, poseen en sus mares fuentes insustituibles de subsistencia y de recursos económicos que les son vitales.

- 4.27 For these reasons, the 200-mile claims must be seen not as simple extensions of the maritime domain of States within limits already clearly permitted by international law, but as particular extensions of functional jurisdiction which had to be maintained and defended in the face of hostility from some parts of the international community. It is important that this be understood. Had the 200-mile claims of Peru and Chile been straightforward and uncontroversial extensions of maritime territory, or even of universally-recognized continental shelf or EEZ rights, one might have expected the question of the precise boundaries of those claims, including the boundaries with neighbouring States, to be a question of considerable importance. Such a view would, however, rewrite history according to the template of the present, and it would be incorrect.
- 4.28 The focus of the attention of the Parties was not upon the relationship between the parts of the American South Pacific 200-mile zone that each of them claimed, but upon the increasing threat which both of them faced from the distant water fishing fleets belonging to third States that were exploiting the resources of the waters adjacent to Peru and Chile. The reaction to that threat was coloured by the example of the United States in unilaterally asserting its own rights over important marine resources adjacent to its coasts, as against third States which might otherwise have sought to exploit those resources. The account of this period must, therefore, begin with the Truman Proclamations of 1945.

2. *The Truman Proclamations*

4.29 The trigger for the maritime claims made by Peru and Chile in 1947 was the Proclamation concerning fisheries made by the President of the United States, Harry S. Truman on 28 September 1945¹⁴⁴. This Proclamation, and the Proclamation on the Continental Shelf adopted on the same day, are very familiar to international lawyers; but it is important to read them in full in order to see the remarkable similarity between the concerns and solutions adopted by the United States and those adopted shortly afterwards by Chile and Peru. The material parts of the Fisheries Proclamation read as follows:

“Policy of the United States with Respect to Coastal Fisheries
in Certain Areas of the High Seas

WHEREAS for some years the Government of the United States of America has viewed with concern the inadequacy of present arrangements for the protection and perpetuation of the fishery resources contiguous to its coasts, and in view of the potentially disturbing effect of this situation, has carefully studied the possibility of improving the jurisdictional basis for conservation measures and international co-operation in this field, and

WHEREAS such fishery resources have a special importance to coastal communities as a source of livelihood and to the nation as a food and industrial resource; and

WHEREAS the progressive development of new methods and techniques contributes to intensified fishing over wide sea areas and in certain cases seriously threatens fisheries with depletion, and

WHEREAS there is an urgent need to protect coastal fishery resources from destructive exploitation, having due regard to conditions peculiar to each region and situation and to the special

¹⁴⁴ Proclamation No. 2668, Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas, 28 September 1945. The Proclamation was accompanied by Executive Order No. 9634, Providing for the Establishment of Fishery Conservation Zones, 28 September 1945. Annex 88.

rights and equities of the coastal State and of any other State which may have established a legitimate interest therein;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to coastal fisheries in certain areas of the high seas:

In view of the pressing need for conservation and protection of fishery resources, the Government of the United States regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale. Where such activities have been or shall hereafter be developed and maintained by its nationals alone the United States regards it as proper to establish explicitly bounded conservation zones in which fishing activities shall be subject to the regulation and control of the United States. Where such activities have been or shall hereafter be legitimately developed and maintained jointly by nationals of the United States and nationals of other States, explicitly bounded conservation zones may be established under agreements between the United States and such other States; and all fishing activities in such zones shall be subject to regulation and control as provided in such agreements. The right of any State to establish conservation zones off its shores in accordance with the above principles is conceded, provided that corresponding recognition is given to any fishing interests of nationals of the United States which may exist in such areas. The character as high seas of the areas in which such conservation zones are established and the right to their free and unimpeded navigation are in no way thus affected.”

- 4.30 The Fisheries Proclamation thus rested control over coastal fisheries partly upon agreement with other interested States. That was, however, emphatically not the case with the United States’ 1945 Continental Shelf Proclamation¹⁴⁵,

¹⁴⁵ Proclamation No. 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, 28 September 1945. The Proclamation was accompanied by Executive Order No. 9633, Reserving and Placing Certain resources of the Continental Shelf under the Control and Jurisdiction of the Secretary of the Interior, 28 September 1945. Annex 88.

which accompanied the Fisheries Proclamation on 28 September 1945. The Continental Shelf Proclamation and Executive Order constituted an explicit and unilateral assertion of exclusive United States rights over the resources of the continental shelf. The Proclamation read as follows:

“Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf

WHEREAS the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

WHEREAS its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilisation is already practicable or will become so at any early date; and

WHEREAS recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilisation when and as development is undertaken; and

WHEREAS it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilise or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of their nature necessary for utilisation of these resources;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards 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 as appertaining to the United States, subject to its jurisdiction and control. 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. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.”

- 4.31 There are two points to be made about the Truman Proclamations of 1945. The first is that neither Proclamation was expressed as a claim to jurisdiction over the seas within a specified distance of the shore¹⁴⁶. Both Proclamations were assertions of the right of the United States to exercise jurisdiction over undefined adjacent marine areas for specific purposes; and both, plainly, were motivated by the need to assert the jurisdiction necessary to protect an identified interest of the United States in those adjacent marine areas.
- 4.32 Thus, the Truman Proclamations were essentially *functional* rather than *zonal* in nature. They aimed not at the creation of precisely delimited zones, but at the assertion of a competence to exercise jurisdiction over undefined areas of the sea and sea-bed and subsoil adjacent to the coast for specified purposes.
- 4.33 The second point is that the Continental Shelf Proclamation, unlike the Fisheries Proclamation, asserted *exclusive* United States rights over valuable marine resources adjacent to its coasts. In essence, the United States identified the major source of wealth in the waters adjacent to its coasts, and asserted

¹⁴⁶ The press release accompanying the Proclamations did, however, state that “Generally, submerged land which is contiguous to the continent and which is covered by no more than 100 fathoms (600 feet) of water is considered as the continental shelf” <<http://www.presidency.ucsb.edu/ws/index.php?pid=12332>> accessed 21 November 2008.

ownership of it. As the United States claims were presented not as exceptional measures in breach of international law¹⁴⁷ but as measures consonant with the development of international law, it followed that other States could (in the eyes of those who accepted the validity of the Truman Proclamations) make similar claims themselves. For Peru and Chile, the major maritime resources were at the time fish and whales, not petroleum. For them, fish and whales were as much a strategic resource as petroleum, and it was natural that they should emulate the United States in asserting rights over the fisheries off their coasts.

4.34 The natural and the intended effect of the Truman Fisheries Proclamation was that many of the fishing vessels that had previously been fishing off the United States coasts would be forced to look for fish beyond the new United States fishing zones. Inevitably, much of that effort was diverted southwards, to the fisheries off the coasts of Latin America. Thus, the result of a unilateral measure by a powerful State claiming exclusive rights over the most valuable marine resources (hydrocarbons) off its own coasts was to reduce Peru and Chile's share of the one marine resource (fisheries) which benefited the Pacific States of Latin America. It was in the face of this very large, long-term, increase in the pressure on their coastal fish stocks that Peru and Chile (and Ecuador) took steps to extend their maritime jurisdiction, precisely in order to offer some possibility of controlling access to their coastal fisheries, thus protecting both the fisheries and the States' own interests in them¹⁴⁸.

4.35 In these ways the Truman Proclamations simultaneously provided a precedent for the unilateral assertion of exclusive rights by States over valuable marine resources in the seas adjacent to their coasts, put increased pressure upon

¹⁴⁷ In contrast to, for example, the UK action in bombing the stricken Liberian tanker, the *Torrey Canyon*, in 1967, which was presented as a necessary action uninhibited by international law. See the UK *House of Commons Debates*, 4 April 1967, Vol. 744, at columns 38-54.

¹⁴⁸ See, for example, Auguste, Barry B.L.: *The Continental Shelf: The practice and policy of the Latin American States with special reference to Chile, Ecuador and Peru*, Paris, Librairie Minard and Geneva, Librairie E. Droz, 1960, pp. 155-165; Scully, Michael: "Peru goes fishing". (*Américas*, Vol. 3, No. 7, 1951, July, pp. 7-9, 42).

the fish stocks that were already under commercial exploitation in the high seas off the Pacific coast of South America, and created a situation in which it became a matter of urgent necessity that the Latin American claims to extended fisheries jurisdiction be made.

3. The Mexican and Argentinean Claims of 1945-1946

4.36 As will be seen, the Chilean¹⁴⁹ and the Peruvian¹⁵⁰ claims of 1947 were explicitly based upon the Truman Proclamations and upon the claims made by Mexico and Argentina in 1945 and 1946. The Mexican Presidential Declaration of 29 October 1945, asserted that –

“the Government of the Republic lays claim to the whole of the continental platform or shelf adjoining its coast line and to each and all of the natural resources existing there, whether known or unknown, and is taking steps to supervise, utilize and control the closed fishing zones necessary for the conservation of this source of well-being.”¹⁵¹

4.37 On 9 October 1946 Argentina adopted a Declaration Proclaiming Sovereignty over the Epicontinental Sea and the Continental Shelf¹⁵². The Declaration recalled the United States and Mexican claims and stated that:

“In the international sphere conditional recognition is accorded to the right of every nation to consider as national territory the entire extent of its epicontinental sea and of the adjacent continental shelf”¹⁵³.

¹⁴⁹ See paras. 4.45-4.46 below.

¹⁵⁰ See paras. 4.50-4.51 below.

¹⁵¹ Declaration of the President of Mexico on the Continental Shelf, 29 October 1945. Annex 89.

¹⁵² The Declaration was formulated on 11 October 1946 by Decree No. 14.708/46.

¹⁵³ Decree No. 14.708/46 of 11 October 1946. Annex 90.

There was no indication in this 1946 Declaration of the seaward extent of the epicontinental sea or the continental shelf claim, or of the manner in which the boundaries between Argentina's zones and those of neighbouring States might be drawn.

- 4.38 Both the Mexican and the Argentinean claims, like the Truman Proclamations before them, were plainly concerned to assert the principle of national control over the resources of the adjacent seas, and not to fix the lateral or the seaward limits of the new maritime zone.

4. South-East Pacific Fisheries in the 1940s

- 4.39 The practice of Peru and Chile must be understood against the background of their concern with their offshore fisheries. Fisheries in the South-East Pacific have long attracted fishing vessels from outside the region. The coastal States have, correspondingly, long sought to preserve such fisheries for the benefit of their citizens. In 1833, for example, Peru adopted a decree which provided that only Peruvian citizens could fish or hunt whales and amphibians on Peruvian shores and islands, and established a system of licences for fishing by Peruvian nationals¹⁵⁴. A similar regulation was enacted in 1840¹⁵⁵.
- 4.40 The importance of the Peruvian fishing industry increased greatly from the 1940s onwards. For example, in 1939 there was only one fishing company registered in Peru, but by 1945 there were 12; and by 1964 Peru accounted for 18% of the world's fishing activities and produced around 40% of the world's fishmeal¹⁵⁶. Peru's commitment to the fishing industry was evidenced by the establishment in 1954 of the *Consejo de Investigaciones*

¹⁵⁴ Supreme Decree of 6 September 1833. Annex 1.

¹⁵⁵ Supreme Decree of 5 August 1840. Annex 2.

¹⁵⁶ Thorp, Rosemary and Bertram, Geoffrey: *1890-1977. Crecimiento y políticas en una economía abierta*, Lima, Mosca Azul, Fundación Friedrich Ebert and Universidad del Pacífico, 1985, pp. 369-371.

Hidrobiológicas, which conducted studies of anchovy and other species, and in 1959 of the *Instituto de Investigaciones de Recursos Marinos* (IREMAR) which worked on FAO studies: the two bodies were merged into the *Instituto del Mar del Perú* (IMARPE) in 1964¹⁵⁷.

- 4.41 In the 1940s and 1950s, the nascent Peruvian fishing industry faced pressure from two sides. On the one hand foreign fishing vessels, displaced from their traditional fishing grounds in the North Pacific by declining catches resulting from over-fishing and by United States conservation measures, were looking to the fish stocks off the west coast of Latin America¹⁵⁸. On the other hand, the United States was considering moves to impose taxes on imports of tuna from third States, including Peru¹⁵⁹. These pressures led to requests from Peruvian businesses that the Peruvian Government take action to protect Peruvian interests and specifically to protect effectively the resources within the 200-mile zone¹⁶⁰.
- 4.42 The situation facing the whaling industry in the 1940s was perhaps the most important factor in the background to the 1947 maritime claims. Peru had an important whaling industry at this time. The Chilean whaling industry had expanded during the years of the Second World War, when European whaling around Antarctica was suspended. European and Japanese whaling in those waters had resumed by 1947, and in the words of Dr. Ann Hollick, a distinguished commentator and former United States

¹⁵⁷ *Instituto del Mar del Perú* <<http://190.81.184.108/imarpe/historia.php>> accessed 1 December 2008.

¹⁵⁸ See Declaration of the Head of the Chilean Delegation contained in the Act of the Closing Ceremony of the Conference on the Exploitation and Conservation of Marine Resources of the South Pacific, 19 August 1952, Santiago. Annex 97.

¹⁵⁹ Fishermen's Protective Acts of 1954 and 1967, amendments of 12 August 1968 and 23 December 1971. See United States Code, Title 22: Foreign Relations and Intercourse, Chap. 25: Protection of Vessels on the High Seas and in Territorial Waters of Foreign Countries. <<http://uscode.house.gov>> accessed 1 December 2008.

¹⁶⁰ Note No. (SM)-6-3/64 of 11 May 1952, from the Minister of Foreign Affairs of Peru to the Ambassador of the United States of America. Annex 63.

Government employee, in her paper published in the 1977 *American Journal of International Law*:

“By 1947 Chile’s infant whaling industry found itself threatened by ever increasing levels of competition with efficient distant water whaling fleets. There was also the prospect that the Chilean Government might become a party to international agreements which would limit the access of Chilean companies to the offshore whaling resource.”¹⁶¹

- 4.43 In December 1946 the International Convention for the Regulation of Whaling had been adopted at the Washington Conference. Both Peru and Chile had attended the Conference, and both signed the Convention; but they quickly came to the view that the Convention favoured the larger whaling powers to the detriment of States such as Peru and Chile, and they decided not to ratify it¹⁶². They decided instead to pursue their own approach to the whaling problem. Despite the strategic differences between these two States in respect of the Pacific, 1947 was a year in which the interests of Peru and Chile in maritime matters converged.
- 4.44 It was against the background of the threat to South-East Pacific fisheries, and the adoption of the Truman Proclamations, that the Chilean and Peruvian claims were made in 1947.

5. *Chile’s 1947 Claim*

- 4.45 Chile proclaimed its 200-mile zone on 23 June 1947¹⁶³ in order to protect its whaling industry by asserting the right to exclude foreign whaling and fishing vessels from its coastal waters. Chile’s Proclamation, which was

¹⁶¹ Hollick, Ann L.: “The Origins of 200-Mile Offshore Zones”. (*The American Journal of International Law*, Vol. 71, No. 3, 1977, July, pp. 497-498).

¹⁶² See Rivera Marfán, Jaime: *La Declaración sobre la Zona Marítima de 1952*. Santiago, Editorial Jurídica de Chile, 1968, p. 37.

¹⁶³ Presidential Declaration Concerning Continental Shelf of 23 June 1947. Annex 27.

published on 29 June 1947 in the daily newspaper *El Mercurio*, recalled the Truman Proclamation and the Presidential Declarations made by Mexico in 1945 and Argentina in 1946, and stated that “it is manifestly convenient ... to issue a similar proclamation of sovereignty”¹⁶⁴, noting that “international consensus of opinion recognizes the right of every country to consider as its national territory any adjacent extension of the epicontinental sea and the continental shelf”¹⁶⁵.

- 4.46 The Chilean Proclamation did not specify the sea area to which it applied. It read, in part, as follows:

“Considering:

1. That the Governments of the United States of America, of Mexico and of the Argentine Republic, by presidential declarations made on 28 September 1945, 29 October 1945, and 11 October 1946, respectively, have categorically proclaimed the sovereignty of their respective States over the land surface or continental shelf adjacent to their coasts, and over the adjacent seas within the limits necessary to preserve for the said States the natural riches belonging to them, both known and to be discovered in the future;

...

The President of the Republic hereby declares:

...

2. The Government of Chile confirms and proclaims its national sovereignty over the seas adjacent to its coasts whatever may be their depths, and within those limits necessary in order to reserve, protect, preserve and exploit the natural resources of whatever nature found on, within and below the said seas,

¹⁶⁴ *Ibid.*, Preamble, para. 3. (Spanish text: “hay manifiesta conveniencia en efectuar una proclamación de soberanía análoga”).

¹⁶⁵ *Ibid.*, Preamble, para. 4. (Spanish text: “el consenso internacional reconoce a cada país el derecho a considerar como territorio nacional toda la extensión del mar epicontinental y el zócalo continental adyacentes.”).

placing within the control of the government especially all fisheries and whaling activities with the object of preventing the exploitation of natural riches of this kind to the detriment of the inhabitants of Chile and to prevent the spoiling or destruction of the said riches to the detriment of the country and the American continent.

3. The demarcation of the protection zones for whaling and deep sea fishery in the continental and island seas under the control of the Government of Chile will be made in virtue of this declaration of sovereignty at any moment which the Government may consider convenient, such 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. Protection and control is hereby declared immediately 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. This demarcation will be calculated to include the Chilean islands, indicating a maritime zone contiguous to the coasts of the said islands, projected parallel to these islands at a distance of 200 nautical miles around their coasts.

4. The present declaration of sovereignty does not disregard the similar legitimate rights of other States on a basis of reciprocity, nor does it affect the rights of free navigation on the high seas.”¹⁶⁶

Spanish text reads as follows:

“Considerando:

1. Que los Gobiernos de los Estados Unidos de América, de México y de la República Argentina, por declaraciones presidenciales efectuadas el 28 de septiembre de 1945, el 29 de octubre de 1945 y el 11 de octubre de 1946, respectivamente, han proclamado de modo categórico la soberanía de dichos Estados sobre la planicie continental o zócalo continental

¹⁶⁶ *Ibid.*, Preamble, para. 1 and operative provisions.

adyacente a sus costas, y sobre el mar adyacente en toda la extensión necesaria a fin de conservar para tales Estados la propiedad de las riquezas naturales conocidas o que en el futuro se descubran.

...

El Presidente de la República declara:

...

2. El Gobierno de Chile confirma y proclama la soberanía nacional sobre los mares adyacentes a sus costas, cualquiera que sea su profundidad, en toda la extensión necesaria para reservar, proteger, conservar y aprovechar los recursos y riquezas naturales de cualquier naturaleza que sobre dichos mares, en ellos y bajo ellos se encuentren, sometiendo a la vigilancia del Gobierno especialmente las faenas de pesca y caza marítimas, con el objeto de impedir que las riquezas de este orden sean explotadas en perjuicio de los habitantes de Chile y mermadas o destruidas en detrimento del país y del Continente americano.

3. La demarcación de las zonas de protección de caza y pesca marítimas en los mares continentales e insulares que queden bajo el control del Gobierno de Chile, será hecha en virtud de esta declaración de soberanía, cada vez que el Gobierno lo crea conveniente, sea ratificando, ampliando o de cualquier manera modificando dichas demarcaciones, conforme a los conocimientos, descubrimientos, estudios e intereses de Chile que sean advertidos en el futuro, declarándose desde luego dicha protección y control sobre todo el mar comprendido dentro del perímetro formado por la costa con una paralela matemática proyectada en el mar a doscientas millas marinas de distancia de las costas continentales chilenas. Esta demarcación se medirá respecto de las islas chilenas, señalándose una zona de mar contigua a las costas de las mismas, proyectada paralelamente a éstas a doscientas millas marinas por todo su contorno.

4. La presente declaración de soberanía no desconoce legítimos derechos similares de otros Estados sobre la base de reciprocidad, ni afecta a los derechos de libre navegación sobre la alta mar.”

- 4.47 There are two points to make about this Proclamation. *First*, it will be noted that the Proclamation is a tentative, initial step. The Proclamation asserts Chile's initial and (most significantly) *alterable* claim to jurisdiction over adjacent waters, but it does not actually instantiate that claim by the promulgation of precise laws applicable in the zone. The actual *exercise* of Chile's jurisdiction was to take place via adoption of further measures, including the 'demarcations' referred to in its operative provision 3.
- 4.48 *Second*, there is no sign that this Proclamation was intended to address the question of the location of lateral maritime boundaries with neighbouring States. The Proclamation is concerned with the seaward extension of Chilean jurisdiction. It is simply said, in express but vague terms, that the "declaration of sovereignty does not disregard the similar legitimate rights of other States on a basis of reciprocity".
- 4.49 These features of Chile's 1947 Proclamation (which are, as is explained below, also features of Peru's slightly later measure) are unsurprising. The Proclamation was a tentative, innovative step at a time when there was no general acceptance in international law of any claims to maritime jurisdiction beyond the narrow limits of territorial seas and contiguous zones. Even the nascent doctrine of the continental shelf was not then accepted in international law: four years later, in 1951, the arbitrator in the case of *Petroleum Development Ltd v. Sheikh of Abu Dhabi* held that the doctrine of the continental shelf could not claim to have "assumed hitherto the hard lineaments or the definitive status of an established rule of international law."¹⁶⁷

6. Peru's 1947 Claim

- 4.50 Peru's aim in extending its maritime jurisdiction in 1947, as is evident from the Preamble to its Supreme Decree No. 781, enacted on 1 August 1947,

¹⁶⁷ 18 ILR 144, at 155.

was to protect its coastal fisheries from the detrimental effects of exploitation by third States. The relevant passages in the Preamble read as follows:

“Considering:

That the continental submerged shelf forms one entire morphological and geological unit with the continent;

That the shelf contains certain natural resources which must be proclaimed as our national heritage;

That it is deemed equally necessary that the State protect, maintain and establish a control of fisheries and other natural resources found in the continental waters which cover the submerged shelf and the adjacent continental seas in order that these resources which are so essential to our national life may continue to be exploited now and in the future in such a way as to cause no detriment to the country’s economy or to its food production;

That the value of the fertilizer left by the guano birds on islands off the Peruvian coast also requires for its safeguard the protection, maintenance and establishment of a control of the fisheries which serve to nourish these birds;

That the right to proclaim sovereignty and national jurisdiction over the entire extension of the submerged shelf as well as over the continental waters which cover it and the adjacent seas in the area required for the maintenance and vigilance of the resources therein contained, has been claimed by other countries and practically admitted in international law (Declaration of the President of the United States of 28 September 1945; Declaration of the President of Mexico of 29 October 1945; Decree of the President of the Argentine Nation of 11 October 1946; Declaration of the President of Chile of 23 June 1947);

That article 37 of the Constitution establishes that all mines, lands, forests, waters and in general all sources of natural wealth pertain to the State, with the exception of rights legally acquired;

That in fulfilment of its sovereignty and in defence of national economic interests it is the obligation of the State to determine in an irrefutable manner the maritime domain of the Nation, within which should be exerted the protection, conservation and vigilance of the aforesaid resources”¹⁶⁸.

Spanish text reads as follows:

“Considerando:

Que la plataforma submarina o zócalo continental forma con el continente una sola unidad morfológica y geológica;

Que en dicha plataforma continental existen riquezas naturales cuya pertenencia al patrimonio nacional es indispensable proclamar;

Que es igualmente necesario que el Estado proteja, conserve y reglamente el uso de los recursos pesqueros y otras riquezas naturales que se encuentren en las aguas epicontinentales que cubren la plataforma submarina y en los mares continentales adyacentes a ella, a fin de que tales riquezas, esenciales para la vida nacional, continúen explotándose o se exploten en lo futuro en forma que no cause detrimento a la economía del país ni a su producción alimenticia;

Que la riqueza fertilizante que depositan las aves guaneras en las islas del litoral peruano requiere también para su salvaguardia la protección, conservación y reglamentación del uso de los recursos pesqueros que sirven de sustento a dichas aves;

Que el derecho a proclamar la soberanía del Estado y la jurisdicción nacional sobre toda la extensión de la plataforma o zócalo submarino, así como sobre las aguas epicontinentales que lo cubren y sobre las del mar adyacentes a ellas, en toda la extensión necesaria para la conservación y vigilancia de las riquezas allí contenidas, ha sido declarado por otros Estados y admitido prácticamente en el orden internacional (Declaración

¹⁶⁸ Supreme Decree No. 781 of 1 August 1947, Preamble. Annex 6.

del Presidente de los Estados Unidos de América del 28 de septiembre de 1945; Declaración del Presidente de México del 29 de octubre de 1945; Decreto del Presidente de la Nación Argentina del 11 de octubre de 1946; Declaración del Presidente de Chile del 23 de junio de 1947);

Que el artículo 37 de la Constitución del Estado establece que las minas, tierras, bosques, aguas y, en general todas las fuentes naturales de riqueza pertenecen al Estado, salvo los derechos legalmente adquiridos;

Que en ejercicio de la soberanía y en resguardo de los intereses económicos nacionales, es obligación del Estado fijar de una manera inconfundible el dominio marítimo de la Nación, dentro del cual deben ser ejercitadas la protección, conservación y vigilancia de las riquezas naturales antes aludidas”.

4.51 The operative provisions of Supreme Decree No. 781 read as follows:

“1. To declare that national sovereignty and jurisdiction are extended to the submerged continental or insular shelf adjacent to the continental or insular shores of national territory, whatever the depth and extension of this shelf may be.

2. National sovereignty and jurisdiction are exercised as well over the sea adjoining the shores of national territory whatever its depth and in the extension necessary to reserve, protect, maintain and utilize natural resources and wealth of any kind which may be found in or below those waters.

3. As a result of previous declarations the State reserves the right to establish the limits of the zones of control and protection of natural resources in continental or insular seas which are controlled by the Peruvian Government and to modify such limits 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 and at the same time declares that it will exercise the same 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.

As regards islands pertaining to the Nation, this demarcation will be traced to include the sea area adjacent to the shores of these islands to a distance of two hundred (200) nautical miles, measured from all points on the contour of these islands.

4. The present declaration does not affect the right to free navigation of ships of all nations according to international law.”¹⁶⁹

Spanish text reads as follows:

“1. Declárase que la soberanía y la jurisdicción nacionales se extienden a la plataforma submarina o zócalo continental e insular adyacente a las costas continentales e insulares del territorio nacional, cualesquiera que sean la profundidad y la extensión que abarque dicho zócalo.

2. La soberanía y la jurisdicción nacionales se ejercen también sobre el mar adyacente a las costas del territorio nacional, cualquiera que sea su profundidad y en la extensión necesaria para reservar, proteger, conservar y utilizar los recursos y riquezas naturales de toda clase que en o debajo de dicho mar se encuentren.

3. Como consecuencia de las declaraciones anteriores, el Estado se reserva el derecho de establecer la demarcación de las zonas de control y protección de las riquezas nacionales en los mares continentales e insulares que quedan bajo el control del Gobierno del Perú, y de modificar dicha demarcación de acuerdo con las circunstancias sobrevinientes por razón de los nuevos descubrimientos, estudios, o intereses nacionales que fueren advertidos en el futuro; y, desde luego, declara que ejercerá dicho control y protección sobre el mar adyacente a las costas del territorio peruano en una zona comprendida entre esas costas y una línea imaginaria paralela a ellas y trazada sobre el mar a una distancia de doscientas (200) millas marinas, medida siguiendo la línea de los paralelos geográficos. Respecto de las islas nacionales esta demarcación se trazará señalándose

¹⁶⁹ *Ibid.*, operative provisions.

una zona de mar contigua a las costas de dichas islas, hasta una distancia de doscientas (200) millas marinas medida desde cada uno de los puntos del contorno de ellas.

4. La presente declaración no afecta el derecho de libre navegación de naves de todas las naciones, conforme el derecho internacional.”

4.52 It is paragraph 3 that is of primary importance; and its provisions are similar to those of the Chilean Proclamation which was its immediate precursor.

4.53 Paragraph 3 of the 1947 Peruvian Decree asserted the *right* of Peru to establish maritime zones off its coasts:

“[Peru] reserves the right to establish the limits of the zones of control and protection of natural resources in continental or insular seas which are controlled by the Peruvian Government and to modify such limits 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”¹⁷⁰.

Spanish text reads as follows:

“[El Perú] se reserva el derecho de establecer la demarcación de las zonas de control y protección de las riquezas nacionales en los mares continentales e insulares que quedan bajo el control del Gobierno del Perú, y de modificar dicha demarcación de acuerdo con las circunstancias sobrevinientes por razón de los nuevos descubrimientos, estudios, o intereses nacionales que fueren advertidos en el futuro”.

As in the case of the earlier Chilean Proclamation, this Peruvian Decree did not aim or purport to fix the definitive limits of the jurisdiction of the coastal State. It was an assertion in general terms of jurisdictional competence over adjacent waters; and the limits of that competence were explicitly said to be

¹⁷⁰ *Ibid.* para. 3 of the operative provisions.

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”.

- 4.54 Thus, and again like the Chilean Proclamation of 1947, the 1947 Peruvian Decree described only the initial zone within which Peru intended to begin the exercise of its jurisdiction rights:

“[Peru] declares that it will exercise the same 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.”¹⁷¹

Spanish text reads as follows:

“[El Perú] declara que ejercerá dicho control y protección sobre el mar adyacente a las costas del territorio peruano en una zona comprendida entre esas costas y una línea imaginaria paralela a ellas y trazada sobre el mar a una distancia de doscientas (200) millas marinas, medida siguiendo la línea de los paralelos geográficos.”

That was a jurisdictional claim asserted in general terms, to be implemented by later measures¹⁷².

- 4.55 The character of the zone as a jurisdictional claim deserves emphasis. The zone was not envisaged as an extension of national *territory* but only of limited jurisdictional competences.

¹⁷¹ *Ibid.*

¹⁷² For example, Supreme Decree No. 21 of 31 October 1951 approving Peru’s Regulation of Captaincies and National Merchant Navy, placed the maritime domain under the jurisdiction of the Captaincies, which had the duty to police it and protect its resources. Annex 7. In 1969, as a consequence of the increase in maritime activities, Peru created by Law Decree No. 17824 a separate Corps of Captaincies and Coastguard with the responsibility for controlling and protecting the natural resources of the zone established by Supreme Decree No. 781 of 1947. Annex 14.

- 4.56 Similarly, as was the case with the Chilean measure, the Peruvian Decree did not purport to deal with the question of lateral boundaries with neighbouring States.
- 4.57 Again like the Chilean Proclamation, the Peruvian Decree asserted a general claim to a 200-mile zone off both the continental and the insular coasts of the State. In the case of islands the 200-mile zone is said, explicitly and mirroring the language of the Chilean Proclamation, to be measured from all points on the contour of these islands.
- 4.58 The reference in the Peruvian decree to the measurement of the 200 miles “following the line of the geographical parallels” points to the manner in which the seaward limit of the initial zone would be delimited cartographically. The intention was to depict a situation in which at each point on the coast a line 200-mile long would be drawn seaward along the geographical line of latitude, so that there would be a “mirror” coastline parallel to the real coastline – the real coastline would in effect be transposed 200 miles offshore and form the outer edge of the 200-mile zone. There is no sign that the 1947 Decree was intended to set any lateral boundaries with neighbouring States.
- 4.59 While the Chilean and Peruvian instruments were adopted independently, they had, therefore, a similar approach and purpose. That purpose was to assert control over an area of sea out to at least 200 miles from the shore. It was not their concern to set lateral boundaries.
- 4.60 On 12 March 1952 Peru enacted Petroleum Law No. 11780, which established “an imaginary line drawn seaward at a constant distance of 200 miles” as the limit of its jurisdiction¹⁷³. The technical method of constructing the seaward limit of that zone was different from that in the 1947 Decree. Instead of

¹⁷³ Annex 8. (Spanish text: “una línea imaginaria trazada mar afuera a una distancia constante de 200 millas”).

projecting a “parallel coast” shifted 200 nautical miles seaward, the Petroleum Law in effect used what is the “arcs of circles” method, defining the zone as including in principle¹⁷⁴ all areas within 200 nautical miles of any point on the Peruvian coast. Nonetheless, while the methods of constructing the zone were different, the 1952 Petroleum Law reflects a similar intention to lay claim to an entire area lying within 200 nautical miles of the Peruvian coast. There was no Chilean protest against this Petroleum Law.

- 4.61 The difference which would have arisen between the effect of the two methods (1947, 1952) of constructing the seaward limit of Peru’s zone is illustrated in **Figure 4.1**. It will be seen that the ‘1952 method’ gives a smoother, and larger, zone than does the method contemplated in 1947. This reflects the evolution in thinking at this time about the manner in which the outer limits of the coastal State entitlements were to be established – an issue that was remarked upon by the International Court of Justice in the *Anglo-Norwegian Fisheries case*¹⁷⁵.

¹⁷⁴ Because, plainly, there is a need for delimitation with adjacent States.

¹⁷⁵ In the *Anglo-Norwegian Fisheries case (Judgment, I.C.J. Reports 1951, pp. 128-129)* the Court observed that various methods have been contemplated to effect the application of the low-water mark rule. In the Court’s words: “The simplest would appear to be the method of the *tracé parallèle*, which consists of drawing the outer limit of the belt of territorial waters by following the coast in all its sinuosities. This method may be applied without difficulty to an ordinary coast, which is not too broken. ...

...the experts of the Second Sub-Committee of the Second Committee of the 1930 Conference for the codification of international law formulated the low-water mark rule somewhat strictly (‘following all the sinuosities of the coast’). But they were at the same time obliged to admit many exceptions relating to bays, islands near the coast, groups of islands. In the present case this method of the *tracé parallèle*, which was invoked against Norway in the Memorial, was abandoned in the written Reply, and later in the oral argument of the Agent of the United Kingdom Government. Consequently, it is no longer relevant to the case. ‘On the other hand’, it is said in the Reply, the *courbe tangente* – or, in English, ‘envelopes of arcs of circles’ – method is the method which the United Kingdom considers to be the correct one”. See also Gidel, Gilbert: *Le droit international public de la mer. Le temps de paix. Vol. III (La mer territoriale et la zone contiguë)*. Paris, Recueil Sirey, 1934, pp. 504-505; Boggs, S. Whittemore: “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”. (*The American Journal of International Law*, Vol. 24, No. 3, 1930, July, pp. 541-555).

7. *The 1952 Declaration of Santiago*

- 4.62 Pressure on American South Pacific fisheries continued. The effects of that pressure were, moreover, not confined to those immediately involved in whaling and fishing. In 1951 and early 1952, for example, the manager of the Peruvian *Compañía Administradora del Guano* wrote to the Peruvian Government urging action to prevent unlawful fishing in Peruvian waters, and pointed out the complex biological links between different species of life and the consequent disruption if any species were fished to near-extinction¹⁷⁶.
- 4.63 The next significant legal development was the 1952 Declaration of Santiago¹⁷⁷. Chile invited the Governments of Peru and Ecuador to participate in a conference in 1952 “to conclude agreements regarding the problems caused by whaling in the waters of the South Pacific and the industrialization of whale products.”¹⁷⁸
- 4.64 The focus on whaling is significant. Whaling is a ‘hunting’, rather than a ‘farming’ activity, and the need was for the three States collectively to address the problem of foreign whaling fleets. It was necessary that between them they policed the zone effectively. The three coastal States were certainly conscious of the importance of protecting the fish stocks within the 200-mile zone¹⁷⁹. This was the purpose of the 1952 Declaration of Santiago; the purpose was *not* to divide up fishing grounds between the three coastal States.

¹⁷⁶ Letters dated 20 November 1951 and 4 January 1952 from Carlos Llosa Belaúnde, Manager of the Managing Company of Guano to the Director General of the Exchequer. In: *Compañía Administradora del Guano: El Guano y la Pesca de Anchoqueta*. Lima, 1954, pp. 118-119 and 130-133.

¹⁷⁷ 1952 Declaration of Santiago, 18 August 1952. Annex 47.

¹⁷⁸ Note No. 86 of 10 July 1952 from the Ambassador of Chile to the Minister of Foreign Affairs of Peru. Annex 64. (Spanish text: “tomar acuerdos sobre los problemas que está originando la caza de la ballena en aguas del Pacífico Meridional y la industrialización de sus productos.”).

¹⁷⁹ See, *e.g.*, “Instructions given by the Minister of Foreign Affairs Mr. Manuel C. Gallagher to the chairman of the delegation of Peru, Dr. A. Ulloa, for the signing of the ‘Declaration of Santiago’”, Lima, July 1952. Annex 91.



Figure 4.1

- 4.65 Like the handful of maritime claims that preceded it in the late 1940s, the Declaration of Santiago was a bold and innovative instrument which marked a radical shift in the conception of the limits of national jurisdiction. Like those earlier unilateral claims, it was concerned not with lateral boundaries between neighbouring States but with the seaward extension of national jurisdiction and the exclusion of third-State vessels from, in particular, national fishing or whaling grounds. On the other hand, unlike the unilateral claims that preceded it, this plurilateral instrument established a regional regime in the South-East Pacific in order to establish a maritime zone 200 miles wide and to develop among the States Parties co-operative means to defend that zone and the natural resources within it.
- 4.66 In all these respects the zone established by the 1952 Declaration of Santiago bore marked similarities in its conception with the immense pan-American neutrality or security zone which had been established by the 1939 Declaration of Panama¹⁸⁰ on the outbreak of World War II. The zone established by the 1939 Declaration of Panama¹⁸¹, which reached southwards from the Canada-United States border to enclose the entire continent, and extended much further than 200 miles from the coast, made no reference whatsoever to the lateral maritime boundaries between various States over whose waters it extended.
- 4.67 The focus of the 1952 Declaration of Santiago was primarily economic and for the development of a co-operative policy to consolidate the extension of national jurisdiction of the three States Parties participating in the regime (Peru, Chile, and Ecuador). It was also intended to assert regional solidarity in respect of the new maritime zones in the face of threats from third States. This solidarity was necessary because of the hostility of certain States to the 1947 claims. For example, on 6 February 1948 the United Kingdom wrote to Peru stating that it did not recognize the claim to sovereignty beyond the

¹⁸⁰ Organization of American States. Final Act of the Meeting of the Ministers of Foreign Affairs of the American Republics for Consultation under the Inter-American Agreements of Buenos Aires and Lima. Panama, 23 September 1939 – 3 October 1939 <<http://www.oas.org/consejo/MEETINGS%20OF%20CONSULTATION/Actas/Acta%201.pdf>> accessed 24 November 2008.

¹⁸¹ See **Figure 4.2** in Vol. IV.

three-mile limit¹⁸². Similarly, the United States protested against the Peruvian Decree in a Note dated 2 July 1948¹⁸³. It was also required by the growing threat to fisheries and whale stocks in the South-East Pacific from distant-water fishing fleets. As a Chilean delegate to the First United Nations Conference on the Law of the Sea said:

“Chile, Ecuador and Peru had only taken individual action, and subsequently signed the Declaration of Santiago of 1952, in order to protect the living resources in the maritime zone off their coasts against excessive exploitation by fishing fleets from distant parts.”¹⁸⁴

4.68 The zone was conceived as a single biological unit, and this was reflected in the structures established to manage it. The 1952 Conference created a regional system for the common purpose of the conservation of fisheries and of whale stocks, and for the joint defence by the States Parties of their extended maritime jurisdiction. Among these instruments was the Convention that established the Permanent Commission for the South Pacific, which is an international organization that continues to be very active to this day¹⁸⁵.

4.69 In the 1952 Declaration of Santiago “the Governments of Chile, Ecuador and Peru, determined to conserve and safeguard for their respective peoples the natural resources of the maritime zones adjacent to their coasts”, asserted that:

“I. ... the former extension of the territorial sea and the contiguous zone are inadequate for the purposes of the conservation, development and exploitation of these resources, to which the coastal countries are entitled.

¹⁸² Note No. 11 (152/8/48) of 6 February 1948, from the Ambassador of the United Kingdom to the Minister of Foreign Affairs of Peru. Annex 61.

¹⁸³ Note No. 1030 of 2 July 1948, from the chargé d'affaires a.i. of the United States to the Minister of Foreign Affairs of Peru. Annex 62.

¹⁸⁴ United Nations publications. *Official Documents. United Nations Conference on the Law of the Sea, Geneva, 1958, Vol. III, Act corresponding to the 12th session of March 12 1958*, p. 33.

¹⁸⁵ See Permanent Commission for the South Pacific <<http://www.cpps-int.org/init.htm>> accessed 4 December 2008.

II. In the light of these circumstances, the Governments of Chile, Ecuador and Peru proclaim as a norm of their international maritime policy that they each possess exclusive sovereignty and jurisdiction over the sea along the coasts of their respective countries to a minimum distance of 200 nautical miles from these coasts.”¹⁸⁶

Spanish text reads as follows:

“I. ... la antigua extensión del mar territorial y de la zona contigua sean insuficientes para la conservación, desarrollo y aprovechamiento de esas riquezas, a que tienen derecho los países costeros.

II. Como consecuencia de estos hechos, los Gobiernos de Chile, Ecuador y Perú proclaman como norma de su política internacional marítima, la soberanía y jurisdicción exclusivas que a cada uno de ellos corresponde sobre el mar que baña las costas de sus respectivos países, hasta una distancia mínima de 200 millas marinas desde las referidas costas.”

4.70 The Declaration was conceived, as it explicitly stated, not as a treaty but as a proclamation of the international maritime policy of the three States. Its ‘declarative’ character was clearly recognized. However, not long after the adoption of the Declaration, and in the wake of challenges to the zone from foreign whaling fleets¹⁸⁷, the three States submitted the Declaration to their respective Congresses for approval, in order to give it greater weight¹⁸⁸. On ratification by Congress, it acquired the status of a treaty, and was subsequently registered with the United Nations. The official letter in which the Peruvian Government submitted the Declaration to its Congress stated that:

“The declaration on the maritime zone, the basic document of Santiago, on account of its simply declarative character, goes no further than proclaiming ‘the extension of their sovereignty

¹⁸⁶ Annex 47.

¹⁸⁷ See paras. 4.83-4.85 below.

¹⁸⁸ See Chile: Supreme Decree No. 432 of 23 September 1954. Annex 30; Ecuador: Executive Decree No. 275 of 7 February 1955, Official Record No. 1029 of 24 January 1956; and Peru: Legislative Resolution No. 12305 of 6 May 1955, to be executed by Supreme Decree of 10 May 1955 <<http://www.cpps-int.org/spanish/nosotros/declaracionsantiago.htm>> accessed 4 December 2008.

and jurisdiction over the sea' by all three countries as a norm of their international maritime policy.

....

The Government believes the time has come to back the proclamation of Decree No. 781 of 1 August 1947, and its ulterior international action in its execution, with the legislative approval of its policy for the affirmation of sovereignty of Peru over its Maritime Zone of 200 miles, by the ratification both of the Santiago Agreements of 1952 as well as of the Lima Conventions of 1954.”¹⁸⁹

Spanish text reads as follows:

“La declaración sobre zona marítima, el documento básico de Santiago, por su carácter simplemente declarativo, no va mas allá de proclamar por los tres países como norma de su política internacional marítima ‘la extensión de su soberanía y jurisdicción sobre el mar’

...

Cree el Gobierno que ha llegado el momento de respaldar la proclamación del Decreto No. 781, de 1º de agosto de 1947 y la acción internacional posterior del Gobierno en su ejecución, con la aprobación legislativa de su política de afirmación de la soberanía del Perú sobre su Zona Marítima de 200 millas por la ratificación tanto de los acuerdos de Santiago de 1952 como de los Convenios de Lima de 1954.”

¹⁸⁹ Official Letter No. (M)-3-O-A/3 of 7 February 1955, from the Ministry of Foreign Affairs, pp. 2, 4. Annex 95. This declarative character was also referred to in several official documents from Peru and Chile. See: Report of the Foreign Affairs Committee of the Congress of Peru on the Agreements and Conventions signed by Peru, Chile and Ecuador in Santiago, 18 August 1952, and in Lima, 4 December 1954, p. 8. Annex 96; Message from the Chilean Executive to the Congress for the Approval of the 1952 Agreements of 26 July 1954. Sessions Diary of the Chilean Senate 1954, p. 893. Annex 92; Report of the Foreign Affairs Committee of the Chilean Senate. Sessions Diary from the Chilean Senate 1954, pp. 1390-1391. Annex 93; Report No. 41 of the Foreign Affairs Committee of the Chilean Deputies Chamber. Sessions Diary from the Chilean Deputies Chamber 1954, pp. 2960-2962. Annex 94.

- 4.71 It will also be noted that the 1952 Declaration of Santiago, like the 1947 claims by Chile and Peru, was explicitly provisional in nature. It proclaimed the *policy* of asserting maritime sovereignty and jurisdiction¹⁹⁰ for the specifically economic purposes of controlling the conservation and exploitation of fisheries and other natural resources, out to a point that was not actually stipulated in the Declaration but which was “a *minimum* distance of 200 nautical miles from these coasts” (emphasis added). It was thus made clear that the States might claim more than 200 nautical miles. Again, the concern was only with the seaward extension of the zone: there was no concern with the question of lateral boundaries between the participating States.
- 4.72 It will be noted, too, that in the 1952 Declaration of Santiago the three States asserted the existence of “exclusive sovereignty and jurisdiction over the sea along the coasts of their respective countries to a minimum distance of 200 nautical miles from these coasts”. It was essentially an announcement addressed to the rest of the world by the three States that there was a 200-mile American South Pacific maritime zone adjacent to the west coast of the continent. It was primarily an exercise in regional solidarity.
- 4.73 The regional nature of the 1952 Declaration of Santiago is underlined by the terms of another instrument adopted at the same time – the Regulations for Maritime Hunting Operations in the Waters of the South Pacific. Article 4 of that instrument reads as follows:

“Pelagic whaling may be carried out in the maritime zone within the jurisdiction or sovereignty of the signatory countries only

¹⁹⁰ As the Chairman of the Chilean delegation to the First United Nations Conference on the Law of the Sea, Luis Melo Lecaros noted, the Declaration “[d]oes not express that the three countries declare sovereignty over a 200-mile sea, but it establishes that the three countries proclaim it [the sovereignty] as a norm of their international maritime policy”. (Spanish text: “No expresa ese Convenio que los tres países declaren la soberanía sobre 200 millas del mar, sino que establece que los tres países la proclaman como norma de su política internacional marítima.”). See Melo Lecaros, Luis: “El Derecho del Mar” (*Revista de Derecho de la Universidad de Concepción*, Year XXVII, No. 110, 1959, October-December, p. 425).

with the prior authorization of the Permanent Commission¹⁹¹, which shall lay down the conditions to which such authorization shall be subject. This authorization must be granted with the unanimous agreement of the Commission.”¹⁹²

Spanish text reads as follows:

“La caza pelágica de ballenas sólo podrá realizarse en la zona marítima de jurisdicción o soberanía de los países signatarios, previo permiso concedido por la Comisión Permanente, la que fijará las condiciones a que quedará subordinado dicho permiso. Este permiso deberá ser concedido por acuerdo unánime de la Comisión.”

Thus, the regulation of whaling within the American South Pacific 200-mile zone was treated as a communal matter for the three States acting together, rather than as a matter for each State to address individually. The waters within the 200-mile zone were treated as a single unit.

- 4.74 As far as the *continental* coasts of the three States Parties were concerned, nothing in the text of the 1952 Declaration of Santiago suggests that the States intended anything other than a simple claim to a maritime zone “along the coasts of their respective countries to a minimum distance of 200 nautical miles from these coasts”. The 1952 Declaration of Santiago – in the same way as the 1952 Peruvian Petroleum Law adopted some months before, but unlike the 1947 Decree – asserts a claim to a zone whose seaward limit is measured at a minimum distance of 200 nautical miles from the coast (and not on the geographic parallels), while it did not address lateral boundaries at all. That is, in the words of the 1952 Peruvian Petroleum Law, following

¹⁹¹ *I.e.*, the Provisional Permanent Commission established by the Parties. The Permanent Commission of the Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific was established by the three States Parties under the *Agreement relating to the Organization of the Permanent Commission of the Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific*, Santiago, 18 August 1952. Annex 48.

¹⁹² Regulations for Maritime Hunting Operations in the Waters of the South Pacific, 18 August 1952. Annex 49.

“an imaginary line drawn seaward at a constant distance of 200 miles from the low-water line along the continental coast”¹⁹³.

- 4.75 The same principle was applied to the *island* coasts of the three States. Paragraph IV of the 1952 Declaration of Santiago provided:

“In the case of island territories, the zone of 200 nautical miles shall apply to the entire coast of the island or group of islands.”

Spanish text reads as follows:

“En el caso de territorio insular, la zona de 200 millas marinas se aplicará en todo el contorno de la isla o grupo de islas.”

- 4.76 Having established that in principle islands fall within the general rule and have an entitlement to a 200-mile zone, an exception was made at the initiative of Ecuador¹⁹⁴. Paragraph IV continued:

“If an island or group of islands belonging to one of the countries making the declaration is situated less than 200 nautical miles from the general maritime zone belonging to another of those

¹⁹³ Law No. 11780, Petroleum Law of 12 March 1952, article 14 (4). Annex 8. (Spanish text: “una línea imaginaria trazada mar afuera a una distancia constante de 200 millas de la línea [de] baja marea del litoral continental”).

¹⁹⁴ At the beginning of the 1952 Conference of Santiago Chile submitted a proposal stating that the 200-mile zone would be applied to the entire coast of the island or group of islands, except “if an island or group of islands belonging to one of the countries making the declaration is situated less than 200 nautical miles from the general maritime zone belonging to another of those countries, according to what has been established in the first paragraph of this article, the maritime zone of the said island or group of islands shall be limited, in the corresponding part, to the distance that separates it from the maritime zone of the other State or country”. (Spanish text: “Si una isla o grupo de islas perteneciente a uno de los países declarantes estuviera a menos de 200 millas marinas de la zona marítima general que corresponda a otro de ellos, según lo establecido en el primer inciso de este artículo la zona marítima de dicha isla o grupo de islas quedará limitada, en la parte que corresponde, a la distancia que la separa de la zona marítima del otro estado o país.”). It was the delegate of Ecuador who proposed to include the reference to the parallel of the point at which the land boundary of the respective States reaches the sea, in order to avoid any misinterpretation regarding the “interference zone in the case of islands.” (Spanish text: “la zona de interferencia en el caso de islas”). Cf. Act of the First Session of the Juridical Affairs Commission of the First Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific, held in Santiago de Chile on 11 August 1952. Annex 56.

countries, the maritime zone of the island or group of islands shall be limited by the parallel at the point at which the land frontier of the States concerned reaches the sea.”¹⁹⁵

Spanish text reads as follows:

“Si una isla o grupo de islas pertenecientes a uno de los países declarantes estuviere a menos de 200 millas marinas de la zona marítima general que corresponde a otro de ellos, la zona marítima de esta isla o grupo de islas quedará limitada por el paralelo del punto en que llega al mar la frontera terrestre de los estados respectivos.”

- 4.77 This provision in the second sentence of Paragraph IV applied only to those islands and groups of islands that are situated less than 200 nautical miles from the general (*sc.*, the continental) maritime zone of another State Party and only in the segment in which the maritime zone of such islands would overlap with the general maritime zone of the neighbouring State. It thus limited only the entitlements generated by certain islands, not the entitlements generated by the continental coast. Indeed, had the Declaration applied the ‘parallel’ as the limit of continental claims, this provision in Paragraph IV would have been redundant. It was, moreover, a matter of concern only in the context of an Ecuador-Peru border, there being no islands near the Peru-Chile land border which could encroach upon the maritime rights of another State.
- 4.78 The position adopted in the Declaration was, therefore, that the States Parties have rights over all waters lying in front of their continental and insular coasts, initially out to a distance of at least 200 miles but extendable thereafter, except in the case of certain islands and groups of islands, whose maritime zones would be limited by a parallel of latitude.

¹⁹⁵ Annex 47.

4.79 Paragraph IV, second sentence, should be highlighted because it adopts, without remarking on the fact, a solution very different from the approaches to maritime delimitation which were then current. For example, Schücking, the rapporteur on the Law of the Sea for the League of Nations Codification Conference, reflecting the absence of any agreed approach to maritime delimitation, had suggested two alternative approaches to the drawing of lateral limits in the territorial sea: (a) the tracing of a line in the sea following the general direction of the border line on land, and (b) a perpendicular (90°) line drawn seawards from the coast at the point where the land border reaches the sea¹⁹⁶. Similarly, Article 12 of the 1958 Territorial Sea Convention later prescribed the use of the median/equidistance line for maritime boundaries in the absence of agreement or special circumstances. It is evident that Paragraph IV, second sentence, of the 1952 Declaration of Santiago was a specific, pragmatic solution to a specific problem, and not an application of a settled legal principle¹⁹⁷.

¹⁹⁶ The final text put forward to States in the Bases of Discussion contained no provision specifying how the maritime boundary was to be drawn. League of Nations, Committee of Experts for the Progressive Codification of International Law, *Report to the Council of the League of Nations on the questions which appear ripe for International Regulation*. Third Session, March-April 1927, Geneva, 1927, p. 42.

¹⁹⁷ The practice of adopting specific solutions to particular problems rather than focusing upon all-purpose maritime boundaries is not uncommon. For example, the zone for which Peru is responsible under the 1979 International Convention on Maritime Search and Rescue (SAR) also departs from those rules. Indeed, the SAR Convention notes that the definition of search and rescue zones “has no bearing on the determination of boundaries among the States, nor shall it prejudice this.” (Chap. 2.1.7). Peru adhered to the Agreement by means of Legislative Resolution No. 24820 of 25 May 1988, published in the Official Gazette *El Peruano* on 26 May 1988. Likewise, concerning NAVAREA zones, established for the purpose of coordinating the transmission of radio navigational warnings, it is said that: “The delimitation of such areas is not related to and shall not prejudice the delimitation of any boundaries between States.” (Section 2.1.3. of the ILO/IHO Guidance Document on the World-Wide Navigational Warning Service adopted by means of Resolution A.706 at the 17th period of sessions of the IMO Assembly). In the same way, the establishment of an ICAO Flight Information Region (FIR) – an area of airspace of defined dimensions within which flight information and alerting services are provided – does not imply the establishment of international political boundaries. The Lima FIR, for example, for many years ran south at an angle of about 25° to the parallel of latitude.

- 4.80 Apart from the second part of Paragraph IV, which deals with the limit of the maritime zones of certain islands and groups of islands, nothing in the text of the 1952 Declaration of Santiago suggests that the Declaration was intended to have any bearing upon the lateral boundaries between the maritime zones of the three States measured from their continental coasts. The Declaration was focused upon the *seaward* extension of those zones. It was a provisional extension of claims to waters lying in front of the coasts of the Parties, variable in accordance with their national interest, and – aside from the second part of Paragraph IV – not at all concerned with lateral boundaries or geographical parallels. The question of maritime delimitation was left open.
- 4.81 The 1952 Declaration of Santiago was, furthermore, quite unsuited to the settlement of international boundary questions. It was initially conceived as a soft law instrument, a joint declaration of major importance setting out the main principles of the international maritime policy adopted by the three States. It does not have the format of a boundary treaty. It does not say that it defines a boundary. It does not give the co-ordinates of any boundary. There is no map illustrating any boundary. There is no requirement for ratification; and while it is always open to States not to require ratification of agreements they enter into, it is very unusual for them to do so in the case of an agreement establishing their maritime boundaries. When reference was made to the Declaration in the Congresses of Peru and Chile in the 1950s there was no mention of it being a boundary agreement¹⁹⁸. It has, in short, none of the characteristics which one expects of a boundary treaty¹⁹⁹. It is true that, when international developments made it desirable to add to the legal weight of the Declaration, the three States Parties subsequently decided to put it through the domestic procedures for ratification (Chile in 1954,

¹⁹⁸ See footnote 189 above.

¹⁹⁹ Similarly, Colombia regarded it as a ‘Declaration’ and did not treat it as a treaty or try to become a ‘Party’ to it. Rather, Colombia accepted the principles of the Declaration in 1980. Colombian Law No. 7 of 4 February 1980, <http://ideam.gov.co:8080/legal/normatividad.shtml?AA_SL_Session=f585ec5fef7fed2d5f67c664cbdb41c3&x=1590> accessed 4 December 2008.

Ecuador in 1955, and Peru in 1955); but that cannot affect the question of its original aim, purpose and nature²⁰⁰. The manner in which the Parties handled the 1952 Declaration of Santiago accordingly strongly reinforces the conclusion that it was not the purpose or effect of the Declaration to fix the international maritime boundary between Peru and Chile.

8. *The Reaction to the 1952 Declaration of Santiago*

- 4.82 The 1952 Declaration of Santiago was quickly challenged. Denmark, the United States, Great Britain, the Netherlands, Norway and Sweden sent notes reserving their position in respect of the assertion of jurisdiction that had been made in the Declaration²⁰¹. None of the protests made any reference to the question of lateral boundaries within the zone.
- 4.83 A more direct challenge occurred in 1954, when two large whaling fleets prepared to undertake expeditions off the western coast of Peru. One was the Olympic fleet owned by Aristotle Onassis, sailing under Panamanian flag. It included 12 hunting craft and one 18,000-ton factory ship, the *Olympic Challenger*. The other was the *Spermacet Whaling Company* fleet, made up of eight Norwegian-owned ships sailing under French flag. The representatives of both companies made inquiries in Lima regarding the conditions imposed on whaling in Peruvian waters, and were informed – as well as duly warned – by the Ministry of the Navy of the existing Peruvian legislation and the prohibitions on hunting, together with the sanctions to which they would expose themselves if they decided to proceed with their operations in the 200-mile zone. The *Spermacet* fleet respected the requirements, but the Onassis *Olympic Challenger* fleet made a well-publicised decision to challenge the Peruvian measures. Despite having been warned by the Peruvian Consulate, it was known that the Onassis fleet eventually departed from the Port of

²⁰⁰ See para. 4.70 above.

²⁰¹ Ministerio de Relaciones Exteriores (1955), *op. cit.*, p. 24. Annex 98.

Hamburg in defiance of the Peruvian warnings. Dr. David Aguilar Cornejo, the Peruvian Minister of Foreign Affairs, recorded the next steps:

“As soon as the Ministry of Foreign Affairs became aware that most of the Onassis fleet was sailing under Panamanian flag, precise instructions were imparted to the [Peruvian] Ambassador to Panama, in order for him to request the Minister of Foreign Affairs of that country that his Government forbid craft under Panamanian flag to hunt and fish in our Maritime Zone without prior authorization by the Peruvian Government.

This determination was effectively backed by the Chilean Ambassador to Panama who, in compliance with instructions from his Government, made a similar request.”²⁰²

Spanish text reads as follows:

“Enterada la Cancillería que la mayor parte de los barcos de Onassis enarbolaban bandera panameña, impartió precisas instrucciones al Embajador de la República en Panamá a fin de que solicitase al Ministro de Relaciones Exteriores de ese país que su Gobierno prohibiese a los buques de su bandera el ejercicio de actividades de caza y pesca en nuestra Zona Marítima sin autorización del Gobierno del Perú.

Dicha acción fué apoyada eficazmente por el Embajador de Chile en Panamá quien, en cumplimiento de instrucciones de su Gobierno, hizo gestión similar.”

- 4.84 The Government of Panama agreed verbally, through the Peruvian Embassy and its Ambassador in Lima, to request a written permit from Peru for its ships, so that, the Onassis fleet should be allowed to hunt between 15 and 100 miles off the Peruvian coast. This did not, however, resolve the matter:

“This proposal was really unacceptable for the Peruvian Ministry of Foreign Affairs, because it applied only to itself and not to Chile and Ecuador equally”²⁰³.

²⁰² *Ibid.*, p. 15.

²⁰³ *Ibid.*

Spanish text reads as follows:

“Esta propuesta era realmente inaceptable para la Cancillería peruana porque se le hacía sólo a ella sin considerar a Chile y Ecuador”.

This episode underlines the regional nature of the 200-mile zones declared in 1947²⁰⁴.

- 4.85 Vessels belonging to the Onassis fleet were found hunting whales and processing oil 126 miles off the Peruvian coast. The vessels were subsequently arrested and charged with violations of the 1947 Supreme Decree No. 781 and other Peruvian regulations. Fines were imposed and paid, and the ships were then released. The incident had, in the meantime, attracted a further intervention by Great Britain, acting to protect the interests of the British insurers²⁰⁵ with whom Onassis had insured his vessels specifically against the risk of arrest²⁰⁶. When Peru rejected a United Kingdom protest against the seizures of the Onassis vessels, the Chilean Foreign Minister sent a congratulatory letter to the Peruvian Foreign Minister²⁰⁷ – an indication of the regional solidarity which the zone embodied.
- 4.86 There were further difficulties arising from operations of United States flag tuna fishing vessels within the 200-mile zone shortly afterwards, which continued through the latter part of 1954 and early 1955²⁰⁸.

²⁰⁴ Panama subsequently suggested that it might negotiate with Chile, Ecuador and Peru access and profit-sharing agreements for its fishing vessels, and accept inspection of its vessels: *Ibid.*, p. 16. The profit sharing element of that proposal might have required a clear delimitation of the maritime zones of the three States; but the initiative was not pursued and the delimitation did not occur.

²⁰⁵ *Ibid.*, p. 17. Annex 98.

²⁰⁶ Rivera Marfán, Jaime, *op.cit.*, p. 130.

²⁰⁷ Ministerio de Relaciones Exteriores (1955), *op. cit.*, p. 19. Annex 98.

²⁰⁸ Rivera Marfán, Jaime, *op.cit.*, pp. 131-132. See also García Sayán, Enrique: *Notas sobre la Soberanía Marítima del Perú*. Lima, 1955, pp. 35-37.

4.87 These events formed the background to a Chilean initiative in 1954 to summon the Permanent Commission established at the 1952 Santiago meeting, in order to address the urgent problems arising from the non-recognition by certain States of the Declaration of Santiago and their persistent exploitation of the marine resources of the area, and to reaffirm the principles of the Declaration of Santiago. El Salvador, Colombia, Costa Rica and Cuba were invited to the 1954 session as observers²⁰⁹.

9. The Second Conference on Exploitation and Conservation of the Marine Resources of the South Pacific, 1954

4.88 As was noted in Chapter III²¹⁰, six further agreements were signed by the three States, (Chile, Ecuador and Peru) at the Second Conference on Exploitation and Conservation of the Marine Resources of the South Pacific, which took place in Lima in December 1954. All the instruments adopted in 1954 were made in the context of regional solidarity vis-à-vis third States, and they were essentially an integral part of the agreements and resolutions adopted in 1952. It was expressly specified that they were in no way to derogate from the 1952 instruments²¹¹. Here, again, the focus was clearly upon the need to defend the seaward limit of the 200-mile zone against threats from third States: there was no interest in or concern for the delimitation of lateral maritime boundaries between the three States.

4.89 Two of the instruments adopted at the 1954 Conference were the 1954 Complementary Convention and the 1954 Agreement on a Special Zone. These aimed to reinforce regional solidarity vis-à-vis third countries and to establish provisional procedures to deal with specific and concrete situations which could generate friction and affect regional solidarity.

²⁰⁹ Ministerio de Relaciones Exteriores (1955), *op. cit.*, p. 19. Annex 98.

²¹⁰ See footnote 111.

²¹¹ See Article 4 of the 1954 Agreement on a Special Zone. Annex 50.

10. The 1954 Complementary Convention

- 4.90 In the 1954 Complementary Convention to the Declaration of Sovereignty on the Two-Hundred-Mile Maritime Zone, which was the first of the agreements signed on 4 December 1954, the 1952 Declaration of Santiago was recalled, and it was agreed by the three States that:

“FIRST: Chile, Ecuador and Peru shall proceed by common accord in the legal defence of the principle of Sovereignty over the Maritime Zone up to a minimum distance of 200 nautical miles”.

Spanish text reads as follows:

“PRIMERO: Chile, Ecuador y Perú, procederán de común acuerdo en la defensa jurídica del principio de la Soberanía sobre la Zona Marítima hasta una distancia mínima de 200 millas marinas”.

- 4.91 The 1954 Complementary Convention went on to stipulate that:

“SECOND: If any of the parties were to receive claims or protests, or if jurisdictional or arbitral demands were to be brought against them, the signatory countries bind themselves to consult each other regarding the grounds of their defence and oblige themselves to lend each other the largest co-operation for a common defence.

THIRD: In the event of a de facto violation of the said Maritime Zone, the State affected shall immediately report the event to the other Parties, in order to agree the measures that should be taken for the safeguard of the affected sovereignty.”²¹²

²¹² Annex 51.

Spanish text reads as follows:

“SEGUNDO. Si alguna de las partes recibiere reclamaciones o protestas, o bien se formularen en su contra demandas ante Tribunales de Derecho o Arbitrales, generales o especiales, los países pactantes se comprometen a consultarse acerca de las bases de la defensa y se obligan, asimismo, a prestarse la más amplia cooperación para una defensa común.

TERCERO: En el caso de violación por vías de hecho de la Zona Marítima indicada, el Estado afectado dará cuenta inmediata a los otros pactantes para acordar las medidas que convenga tomar en resguardo de la Soberanía afectada.”

- 4.92 The preliminary and innovative character of the initial 200-mile proclamation, and the focus upon regional solidarity, could not be more clearly illustrated. The 1954 Complementary Convention was a commitment by the three States to solidarity in the defence of their 200-mile (or wider) claims, in the face both of pressure to abandon those claims and of threats from distant-water fishing vessels to the fisheries that were protected by the zones²¹³.
- 4.93 The 1954 Complementary Convention was signed by representatives of all three States, but was never ratified by Chile²¹⁴. All of the 1952 and 1954 instruments were approved by the Peruvian Congress by means of Legislative Resolution No. 12305, issued on 6 May 1955 and enacted by means of a Decree of the President of the Republic dated 10 May 1955²¹⁵.
- 4.94 Concerted action was taken, as envisaged, under this agreement. On 12 April 1955, after a long and detailed analysis and exchange of points of view, a text was approved by Chile, Ecuador and Peru to respond to the challenges

²¹³ For an example of the implementation of this aspect of the 1954 Complementary Convention see Note 6-4/8 of 7 February 1967, from the Ministry of Foreign Affairs of Peru to the Ambassador of Chile. Annex 70.

²¹⁴ A fact which would be odd if the Convention had indeed been regarded as a boundary agreement.

²¹⁵ Legislative Resolution No. 12305 of 6 May 1955. Annex 10.

to the 200-mile zone that had been presented by Denmark, the United States, Great Britain, the Netherlands, Norway and Sweden²¹⁶. Similarly, at around the same time and at the initiative of Ecuador, it was agreed that the three States would co-ordinate their positions in response to a United States proposal to submit differences concerning maritime claims to the International Court of Justice²¹⁷.

11. The 1954 Agreement on a Special Zone

4.95 The 1954 Agreement on a Special Zone had a very specific, and temporary, purpose. This was spelled out in the Preamble which read (in full) as follows:

“Considering that:

Experience has shown that innocent and inadvertent violations of the maritime frontier between adjacent States occur frequently because small vessels manned by crews with insufficient knowledge of navigation or not equipped with the necessary instruments have difficulty in determining accurately their position on the high seas;

The application of penalties in such cases always produces ill-feeling in the fishermen and friction between the countries concerned, which may affect adversely the spirit of co-operation and unity which should at all times prevail among the countries signatories to the instruments signed at Santiago; and

It is desirable to avoid the occurrence of such unintentional infringements, the consequences of which affect principally the fishermen”²¹⁸.

²¹⁶ Ministerio de Relaciones Exteriores (1955), *op. cit.*, pp. 24-25. Annex 98.

²¹⁷ *Ibid.*, p. 27.

²¹⁸ Annex 50.

Spanish text reads as follows:

“Considerando:

Que la experiencia ha demostrado que debido a las dificultades que encuentran las embarcaciones de poco porte tripuladas por gente de mar con escasos conocimientos de náutica o que carecen de los instrumentos necesarios para determinar con exactitud su posición en alta mar, se producen con frecuencia, de modo inocente y accidental, violaciones de la frontera marítima entre los Estados vecinos;

Que la aplicación de sanciones en estos casos produce siempre resentimientos entre los pescadores y fricciones entre los países que pueden afectar al espíritu de colaboración y de unidad que en todo momento debe animar a los países signatarios de los acuerdos de Santiago; y

Que es conveniente evitar la posibilidad de estas involuntarias infracciones cuyas consecuencias sufren principalmente los pescadores”.

- 4.96 In its judgment in the *Case Concerning Maritime Delimitation in the Black Sea* the Court drew attention to the need to determine the specific purpose for which an agreement between the parties to a dispute was made, before drawing inferences as to its possible relevance in a delimitation dispute²¹⁹. That is important in particular in circumstances where one party argues that an agreement concluded many years before had the effect of “an implied prospective renunciation” of maritime rights²²⁰. That injunction is apposite in the present case. The purpose of this 1954 Agreement was to avert disputes between fishermen on small fishing boats. In contrast to large, deep-water fishing vessels, small fishing boats normally fish relatively close to the shore.

²¹⁹ *Case Concerning Maritime Delimitation in the Black Sea*, I.C.J. Judgment of 3 February 2009, paras. 69-76.

²²⁰ *Ibid.*, para. 71.

The aim was to reduce friction between near-shore fishermen, in circumstances where one fishing boat might be thought by those on board another boat to have intruded upon the ‘national’ fishing grounds. The purpose was, however, *not* to regulate fishing within the territorial sea. That is evident from the reference in the Preamble to “small vessels ... on the high seas”, and from the operative clauses of the Agreement.

4.97 The operative paragraphs of that Agreement provided that the three States agreed:

“1. 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 a maritime boundary between the two countries.

2. The accidental presence in the said zone of a vessel of either of the adjacent countries, which is a vessel of the nature described in the paragraph beginning with the words ‘Experience has shown’ in the preamble hereto, shall not be considered to be a violation of the waters of the maritime zone, though this provision shall not be construed as recognizing any right to engage, with deliberate intent, in hunting or fishing in the said special zone.

3. Fishing or hunting within the zone of 12 nautical miles from the coast shall be reserved exclusively to the nationals of each country.

4. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held in Santiago de Chile in August 1952.”²²¹

²²¹ Annex 50.

Spanish text reads as follows:

“PRIMERO: Establécese una Zona Especial, a partir de las 12 millas marinas de la costa, de 10 millas marinas de ancho a cada lado del paralelo que constituye el límite marítimo entre los dos países.

SEGUNDO: La presencia accidental en la referida zona de las embarcaciones de cualquiera de los países limítrofes, aludidas en el primer considerando, no será considerada como violación de las aguas de la zona marítima, sin que esto signifique reconocimiento de derecho alguno para ejercer faenas de pesca o caza con propósito preconcebido en dicha Zona Especial.

TERCERO: La pesca o caza dentro de la zona de 12 millas marinas a partir de la costa está reservada exclusivamente a los nacionales de cada país.

CUARTO: Todo lo establecido en el presente Convenio se entenderá ser parte integrante, complementaria y que no deroga las resoluciones y acuerdos adoptados en la Conferencia sobre Explotación y Conservación de las Riquezas Marítimas del Pacífico Sur, celebrada en Santiago de Chile, en Agosto de 1952.”

- 4.98 The aim of this Agreement was thus clear, and it was narrow and specific. The Agreement was intended to establish a ‘zone of tolerance’, 20 nautical miles wide, within which minor accidental encroachments on another State’s maritime zone by small and ill-equipped fishing vessels would be excused. In that way, the imposition of punishments and fines that might cause resentment and friction between fishermen would be avoided. That zone was, however, a zone established “at a distance of 12 nautical miles from the coast”. It was not a zone established within the coastal 12-mile belt.
- 4.99 By the 1950s both Peru and Chile claimed three-mile territorial seas, with additional police or security jurisdiction out to 12 miles from the coast²²². Ecuador claimed, by a Decree of the Congress dated 21 February 1951 relating

²²² See paras. 4.12-4.19 above.

to territorial waters²²³, a 12-mile territorial sea. In 1953, article 6 of the Chilean Law of the Directorate General for the Maritime Territory and Merchant Marine set the limit of the Directorate's jurisdiction as "twelve miles (four nautical leagues) measured from the lowest waterline, or the extent of the territorial sea established by the international agreements adhered to by the Government of Chile, if that is greater..."²²⁴.

4.100 The 1954 zone of tolerance was, therefore, established in an area that was, in the terms of traditional international law, an area of high seas within which the States Parties to the 1954 Agreement on a Special Zone claimed a limited functional jurisdiction in respect of fisheries. The question of fishing activity closer to the coast was addressed only later, in the latter half of the 1960s²²⁵. The 1954 zone of tolerance was a practical device for avoiding friction and the imposition of fines, not an international boundary. It was not to be expected that an international maritime boundary would be established in the waters beyond the territorial sea: that was not a part of the conceptual structure of international law in the early 1950s. The Agreement did not purport to establish a zone of tolerance in the waters closer to the shore.

4.101 The 'zone of tolerance' was defined by reference to a parallel of latitude. This is a natural approach to the problem of ensuring that small boats can easily determine whether or not they are infringing the zone. Seafarers fix their position at sea using the co-ordinates of latitude and longitude. As is well known, it is also much easier to determine latitude than longitude at sea, particularly for those with "insufficient knowledge of navigation or not equipped with the necessary instruments" that consequently "have difficulty

²²³ Decree of the Congress of the Republic of Ecuador of 21 February 1951. *United Nations Legislative Series ST/LEG/SER.B/6*, p. 13.

²²⁴ Decree with Force of Law No. 292 of 25 July 1953, Fundamental Law of the Directorate General of Maritime Territory and Merchant Marine. Annex 29. (Spanish text: "doce millas (cuatro leguas marinas) medidas desde la línea de la más baja marea, o la extensión de mar territorial que se fije en acuerdos internacionales a los que se adhiera el Gobierno de Chile si es superior ...").

²²⁵ See paras. 4.118 *ff.* below.

in determining accurately their position on the high seas” (to use the words of the Preamble to the Agreement). It is not surprising that the expedient of a reference to parallels of latitude was adopted in the 1954 Agreement on a Special Zone.

- 4.102 The 1954 Agreement on a Special Zone had no larger purpose such as establishing a comprehensive regime for the exploitation of fisheries, or adding to the content of the 200-nautical-mile zones, or setting out an agreed definition of their limits and borders. And it had nothing whatever to do with the sea-bed, or any other maritime resources apart from fish. Moreover, it was explicitly said of this Agreement that it was “an integral and supplementary part of, and not in any way to abrogate”, the resolutions and agreements adopted at the 1952 Santiago Conference²²⁶. It was a subordinate instrument. The 1954 Agreement on a Special Zone was plainly not an international boundary treaty.
- 4.103 The 1954 Agreement on a Special Zone did not specify the geographical coordinates of this special maritime frontier zone. It referred simply to a zone “on either side of the parallel which constitutes a maritime boundary between the two countries.”²²⁷ That rather opaque formula, introduced at the instance of Ecuador²²⁸, referred only to *one* parallel between *two* countries (despite the fact that the 1954 Agreement on a Special Zone had *three* States Parties). That, too, is readily understandable in the context of the 1952 Declaration of Santiago, which it complemented.

²²⁶ 1954 Agreement on a Special Zone, Art. 4. Annex 50. (Spanish text: “parte integrante, complementaria y que no deroga las resoluciones y acuerdos adoptados en la Conferencia sobre Explotación y Conservación de las Riquezas Marítimas del Pacífico Sur, celebrada en Santiago de Chile, en Agosto de 1952.”).

²²⁷ *Ibid.*, Art. 1. (Spanish text: “a cada lado del paralelo que constituye el límite marítimo entre los dos países.”).

²²⁸ Act of the Second Session of Commission I of the Second Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific, 3 December 1954, p. 5. Annex 57.

4.104 As was noted above²²⁹, the only express reference in the 1952 Declaration of Santiago to the use of a parallel of latitude occurs in Paragraph IV which, it will be recalled, used a parallel to limit the maritime zone of an island or group of islands in situations where that island or group of islands was situated less than 200 miles from the general maritime zone of another State. That was a matter of concern only in the context of Ecuador and Peru, where the 200-mile zones around certain islands near the starting-point of the land border between Ecuador and Peru overlap with the zones generated by the mainland. Its irrelevance to the situation between Peru and Chile is underlined by the fact that Chile did not ratify this Agreement until 1967, 13 years after its conclusion.

4.105 While the 1954 zone of tolerance was understood to apply to the waters between Peru and Ecuador, an informal practice, which was not set out in any international instrument, had arisen in the south. Peruvian fishermen fished in the waters to the north, and Chilean fishermen in waters to the south of the Point Concordia on the seashore.

4.106 Peru has implemented the 1954 special maritime zone in good faith, and continues to do so pending the settlement of the question of the maritime boundary. It continues, for example, to instruct Peruvian fishing vessels to respect the provisional 1954 line. But it does so on the basis that it is implementing a practical arrangement of a provisional nature in order to avoid conflicts between fishing vessels, not that it is observing an agreed international boundary.

12. Developments between 1954 and 1968

4.107 After the adoption of the 1952 and 1954 instruments, the three Latin American countries of the South Pacific continued to act together in the defence of their 200-mile zone against the maritime powers that opposed it. The United

²²⁹ See para. 4.76 above.

States was active in trying to negotiate a solution to the dispute concerning jurisdiction over United States flag fishing vessels beyond the three-mile limit to which the United States adhered; but no such agreement was possible²³⁰.

4.108 Answering the reservations made by the United States, Great Britain and other European countries, in 1955 representatives of Chile, Ecuador and Peru sent identical diplomatic notes to the United States, Great Britain and other States rejecting the proposition that as a matter of international law coastal States had no jurisdiction beyond the three-mile limit. With reference to the 1952 Declaration of Santiago they said:

“In the Declaration of the Maritime Zone, Peru, Chile and Ecuador not only have safeguarded the legitimate interest that other States could have for navigation and trade, but have also contemplated the issuance of fishing and hunting permits in the said zone to nationals and companies of other countries, as long as they submit to the regulations established to protect the species ... Thus the Maritime Zone established in the Declaration of Santiago does not have the characteristics that the Government of (United States, Great Britain) seems to assign to it, but on the contrary, it is inspired, in a defined and precise way, by the conservation and prudent use of natural resources.”²³¹

Spanish text reads as follows:

“En la Declaración sobre Zona Marítima, el Perú, Chile y Ecuador no sólo han resguardado el interés legítimo que pudieran tener otros Estados por la navegación y el comercio, sino que han contemplado el otorgamiento en dicha zona de permisos de pesca y caza a nacionales y empresas de otros países, siempre que se sometan a las reglamentaciones establecidas en salvaguarda de las especies, ... No tiene, pues, la Zona Marítima

²³⁰ Ministerio de Relaciones Exteriores: *Memoria del Ministro de Relaciones Exteriores (28 de Julio de 1955 – 28 de Julio de 1956)*. Lima, Talleres Gráficos P.L. Villanueva, 1956, pp. 12-18. Annex 99.

²³¹ Agreement Between Ecuador, Peru and Chile for a Joint Response to the United States and Great Britain on their Observations to the “Declaration of Santiago”, Lima, 12 April 1955, p. 2, para. d). Annex 58.

establecida en la Declaración de Santiago, los caracteres que parece atribuirle el Gobierno de (Estados Unidos, Gran Bretaña), sino por el contrario, de modo definido y preciso, se inspira en la conservación y prudente utilización de los recursos naturales.”

- 4.109 On 6 October 1955 a further step was taken to consolidate the regional position on the 200-mile zone. Plenipotentiaries from Peru, Chile and Ecuador signed the Protocol of Accession to the 1952 Declaration of Santiago. This Protocol opened up the 1952 Declaration of Santiago to accession by other Latin American States. In it the three Governments reiterated that adherence to the Declaration in no way affected the right of each State to determine the extension and limits of its maritime zone²³². This is further confirmation that the said Declaration did not settle the question of maritime boundaries between the States Parties.
- 4.110 Thus, during the 1950s it remained the case that Chile and Peru were not concerned with their lateral maritime boundaries. Their focus was upon the imperative need to secure the recognition by third States of their 200-mile maritime zone, in an international context in which the traditional Law of the Sea admitted only very much narrower belts of coastal State jurisdiction.
- 4.111 During the decade and a half following the conclusion of the two 1954 agreements, the 200-mile claim remained under a series of specific and serious threats from States which refused to accept its legality. There were several episodes in which foreign fishing vessels were arrested within the zone. For example, in addition to the incidents in the 1950s noted above, Peru arrested 71 United States fishing vessels between 1954 and 1973²³³. Chile took action against unlawful fishing activity in 1957 and 1958, as did Ecuador in 1955 and 1963. The United States’ Senate threatened, in 1963 and again in 1965, to bar United States foreign aid to any States which seized United States

²³² Protocol of Accession to the Declaration on “Maritime Zone” of Santiago, 6 October 1955, p. 2. Annex 52.

²³³ Ferrero Costa, Eduardo: *El Nuevo Derecho del Mar. El Perú y las 200 Millas*. Lima, Fondo Editorial de la Pontificia Universidad Católica del Perú, 1979, pp. 350-351.

fishing vessels on what the United States regarded as the high seas²³⁴, and the United States Congress later adopted measures to strengthen opposition to maritime zones not recognized by the United States²³⁵. It was plain that there remained a need to continue the co-ordinated regional defence of the 200-mile zone against external threats.

- 4.112 There was less in the way of internal legal development on the part of Peru or Chile. Peru enacted a further measure, Supreme Resolution No. 23, dated 12 January 1955 (hereinafter: “the 1955 Supreme Resolution”)²³⁶. That measure in effect reasserted the jurisdictional claim established by Supreme Decree No. 781 of 1947 and the 1952 Declaration of Santiago, and stipulated that the 200-mile zone proclaimed by Peru is an area limited by “a line parallel to the Peruvian coast and at a constant distance of 200 nautical miles from it”. By virtue of this interpretation the 1955 Supreme Resolution applied not the parallels but the “arcs of circles” method, already established in Peruvian Petroleum Law of 1952, to the construction of the Peruvian zone.
- 4.113 The 1955 Supreme Resolution, “[i]n accordance with clause IV of the Declaration of Santiago”, limited the drawing of the outer limit of the maritime domain of Peru to the parallel referred to in that provision – *i.e.*, the geographical parallel which limited the maritime claims where zones generated by islands or groups of islands overlapped with those generated by continental coastlines. As was explained above, that provision applied to the Peru-Ecuador border²³⁷.
- 4.114 A little later, on 6 May 1955, Peru implemented the 1954 Agreement on a Special Zone by Legislative Resolution No. 12305²³⁸. It was not until 1967 that Chile ratified that Agreement²³⁹. Moreover, it was only after Peru’s request for negotiations on maritime delimitation that Chile registered the 1954

²³⁴ Rivera Marfán, Jaime, *op.cit.*, pp. 135-136.

²³⁵ See footnote 159 above.

²³⁶ Annex 9.

²³⁷ See paras. 4.76-4.78 above.

²³⁸ Annex 10.

²³⁹ Chilean Decree No. 519 of 16 August 1967. Annex 33.

Agreement on a Special Zone with the United Nations Treaty Section, in 2004²⁴⁰, again without notice to Peru, to Ecuador, or to the Permanent Commission for the South Pacific. Chile did so, moreover, contrary to the procedures of the Permanent Commission, according to which it is up to the Secretary General to request “the registration of the international treaties or agreements celebrated by the organs of the South Pacific system and the States in it”²⁴¹. That half-century delay in registration is a powerful indication that Chile did not even regard the 1954 Agreement on a Special Zone as an agreement of major importance, let alone as a treaty establishing a maritime boundary with its neighbour.

- 4.115 The lack of urgency in ratifying and registering the 1954 Agreement on a Special Zone reflects the fact that the Agreement had little formal significance, being essentially an *ad hoc* arrangement for dealing with problems that might arise concerning small fishing boats²⁴². There is not the slightest hint in the internal legal procedures pursued by Peru or by Chile that the 1952 or 1954

²⁴⁰ The Agreement was registered by Chile on 24 August 2004. See: The 1954 Agreement on a Special Zone, 4 December 1954, UNTS 40521. Annex 50.

²⁴¹ See Article 24, 1) of the Regulation of the Permanent Commission for the South Pacific, in force since 1 February 2002. In: Permanent Commission for the South Pacific: *Conventions, Agreements, Protocols, Declarations, Statute and Regulation of the CPPS*, Chile-Colombia-Ecuador-Peru, General Secretariat, 3rd edition. Guayaquil, 2007, p. 227. This provision essentially repeats Article 6 d) of the Statute of the General Secretariat of the Permanent Commission for the South Pacific, approved in Quito, on 30 May 1967. In: Permanent Commission for the South Pacific: *Agreements, Bylaws, Regulations, Meetings and International Personnel*. Chile-Ecuador-Peru, General Secretariat, Santiago, 1975, p.57.

²⁴² Cf., the description of the 1954 Agreement on a Special Zone in the 1986 Peruvian Memorandum attached to Note No. 5-4-M/147 addressed to Chile: “the existence of a special zone –established by the Agreement relating to a Maritime Frontier Zone’ – referred to the line of the parallel of the point reached by the land border, must be considered as a *formula* which, although it fulfilled and fulfils the express objective of avoiding incidents with seafarers with scant knowledge of navigation’, is not adequate to satisfy the requirements of safety nor for the better attention to the administration of marine resources” (emphasis added). Annex 76. (Spanish text: “la existencia de una zona especial – establecida por la ‘Convención sobre Zona Marítima Fronteriza’ – referida a la línea del paralelo del punto al que llega la frontera terrestre, debe considerarse como una *fórmula* que, si bien cumplió y cumple el objetivo expreso de evitar incidentes con ‘gentes de mar con escasos conocimientos de náutica’, no resulta adecuada para satisfacer las exigencias de la seguridad ni para la mejor atención de la administración de los recursos marinos” (emphasis added)).

instruments had effected anything of such great legal and constitutional significance to the two States as the determination of an international boundary between them.

- 4.116 In 1958 the four Geneva Conventions on the Law of the Sea were adopted; but neither Peru nor Chile (nor Ecuador) ratified any of them, and they did not provoke any significant development in the treatment of the maritime zones of the three States. Peru had reasserted its position on the 200-mile zone during the Conference. The Head of the Peruvian delegation, Dr. Alberto Ulloa, stated:

“It would be an abuse for non-coastal States to claim the right to fish indiscriminately to the detriment of coastal States. The Declaration of Santiago, issued by three South American countries of the Pacific, was aimed at preventing such an abuse. The Declaration was of a defensive character, and its sole object was the conservation of the living resources of the sea for the benefit of the populations of those countries. It was not, as had been asserted, an arbitrary or aggressive instrument. The principles embodied in the Declaration of Santiago had been endorsed by the Tenth International Conference of American States held at Caracas in 1954. In the Principles of Mexico City, proclaimed in 1956 by the Inter-American Council of Jurists, the right of a coastal State to adopt conservation measures, and to exercise certain exclusive rights of exploitation were clearly recognized.”²⁴³

And at the end of the 1958 Conference the Joint Declaration signed by the Heads of the Delegations of Chile, Ecuador and Peru emphasized that:

“In the absence of international agreement on sufficiently comprehensive and just provisions recognizing and creating a reasonable balance among all the rights and interests, and also in view of the results of this Conference, the regional system

²⁴³ Declaration by the Head of the Peruvian Delegation, Dr. Alberto Ulloa, at the First United Nations Conference on the Law of the Sea, 5 March 1958. Annex 100.

applied in the southern Pacific, which stands for the protection of situations vital to the countries of the region, remains in full force so long as just and humane solutions are not worked out.”²⁴⁴

- 4.117 The Second United Nations Conference on the Law of the Sea, held in Geneva in 1960, also had no effect upon the position of the 200-mile zone. Indeed, as the Peruvian delegate noted, the Conference failed to produce any results at all²⁴⁵.
- 4.118 Local developments off the coasts of the American South Pacific States had more impact. The omission in 1954 to establish measures to avoid friction regarding fishing activities close to the coast gave rise to some bilateral difficulties between Peru and Chile a little later, in the mid-1960s. Just over a decade after the agreement on the arrangements set out in the 1954 Agreements there were diplomatic exchanges between Peru and Chile concerning alleged illegal fishing by Chilean fishing boats in waters close to the Peruvian coast.
- 4.119 There were violations of Peruvian territorial waters by Chilean vessels in 1965²⁴⁶, in the wake of which on 26 May 1965 Peru made its proposal –

“that each country build, on its corresponding seashore, a lighthouse placed no further than five kilometres from the frontier line.”²⁴⁷

Spanish text reads as follows:

“que ambos países construyan, en la zona ribereña que les corresponde, un faro cada uno, a no más de cinco kilómetros de la línea fronteriza.”

²⁴⁴ Declaration by the Chairmen of the Delegations of Chile, Ecuador and Peru, at the First United Nations Conference on the Law of the Sea, 27 April 1958. Annex 102.

²⁴⁵ Declaration by the Peruvian Delegation, at the Second United Nations Conference on the Law of the Sea, 27 April 1960. Annex 103.

²⁴⁶ The Peruvian Memorandum of 26 May 1965 refers to further trespasses on 27 April 1965 by five Chilean vessels. Annex 67.

²⁴⁷ *Ibid.*

4.120 There were further incursions by Chilean fishing vessels later in 1965, which were protested by Peru²⁴⁸. On the other hand, Chile complained of incursions by Peruvian vessels into Chilean waters, and protested against them in a Memorandum dated 6 October 1965²⁴⁹.

13. The Coastal Lights

4.121 Early in 1968, taking advantage of their presence in Lima for a subregional meeting in relation to the South Pacific Agreements, Peruvian officials held a meeting with their counterparts from the Chilean Ministry of Foreign Affairs, for an informal discussion of the questions relating to friction arising from the activities of coastal fishing vessels. After that meeting Peru wrote to Chile on 6 February 1968 saying that Peru considered it –

“convenient, for both countries, to proceed to build posts or signs of considerable dimensions and visible at a great distance, at the point at which the common border reaches the sea, near boundary marker number one.”²⁵⁰

Spanish text reads as follows:

“conveniente que se proceda a construir por ambos países, postes o señales de apreciables proporciones y visibles a gran distancia, en el punto en que la frontera común llega al mar, cerca del hito número uno.”

On 8 March 1968, Chile accepted this proposal²⁵¹ and this was the agreement reached by the Parties. Thus the purpose was to address the problems concerning Peruvian and Chilean fishermen operating close to the coast by erecting beacons to identify the location of the land boundary near the shore.

²⁴⁸ Memorandum of the Embassy of Peru in Chile of 3 December 1965. Annex 69.

²⁴⁹ Memorandum of the Ministry of Foreign Affairs of Chile of 6 October 1965. Annex 68.

²⁵⁰ Note No. (J) 6-4/9 of 6 February 1968, from the Ministry of Foreign Affairs of Peru to the chargé d'affaires *a.i.* of Chile. Annex 71.

²⁵¹ Note No. 81 of 8 March 1968, from the chargé d'affaires *a.i.* of Chile to the Minister of Foreign Affairs (in charge). Annex 72.

4.122 A meeting of the Peruvian and Chilean delegations was held on 25 April 1968 in Arica²⁵². The delegations inspected the relevant ground locations and made “a view ... from the sea.”²⁵³ On the following day a document was signed by the two sides recording their agreed proposal to their respective governments for the installation of –

“two leading marks with daylight and night signalling; the front mark would be placed in the surroundings of Boundary Marker No. 1, in Peruvian territory; the rear mark would be placed at approximately 1,800 metres away from the front mark, in the direction of the parallel of the maritime frontier, which would locate it south of Quebrada de Escritos, in Chilean territory.”²⁵⁴

Spanish text reads as follows:

“dos marcas de enfilación con señalización diurna y nocturna; la marca anterior quedaría situada en las inmediaciones del Hito No. 1, en territorio peruano; la marca posterior estaría ubicada a una distancia aproximada de 1,800 metros de la marca anterior, en la dirección del paralelo de la frontera marítima, lo que la situaría al lado sur de la Quebrada de Escritos, en territorio chileno.”

The document stipulated that the ‘Front Tower’ would be a metal structure not less than 20 metres high, and the ‘Rear Tower’ not less than 30 metres above mean sea level, and that the beacons for night-time identification would have “approximately a 15-mile visibility and distance range”. It is, therefore, apparent that the towers were intended to be of use to fishing vessels relatively near to the coast.

4.123 The beacons were evidently a pragmatic device intended to address the practical problems arising from the coastal fishing incidents in the 1960s. They were

²⁵² Note No. (J) 6-4/19 of 28 March 1968, from the Secretary General of Foreign Affairs of Peru to the chargé d'affaires *a.i.* of Chile. Annex 73.

²⁵³ Document of 26 April 1968. Annex 59. (Spanish text: “una apreciación ... desde el mar”).

²⁵⁴ *Ibid.*

plainly *not* intended to establish a maritime boundary. Moreover, the beacons would not have been visible to ships more than 15 miles or so from the shore. This point deserves emphasis.

- 4.124 Twelve nautical miles was the distance prescribed by Chilean law “for security of the country and the observance of fiscal laws”; but it was also stipulated that Chilean territorial waters extend “up to a distance of one marine league [three nautical miles]”²⁵⁵. The beacons, with their 15-mile visibility, were intended to be visible to vessels within an area that did not correspond either to the Chilean territorial sea, or to the Chilean 200-nautical-mile fisheries zone²⁵⁶. The concern was solely with the problems of coastal fishing vessels. The beacons were not intended to be an element in the mapping out of a formal international maritime boundary: they were a pragmatic bilateral solution to the problems caused by near-shore fishermen encroaching on areas that were considered by fishing communities in the other State to belong to them.
- 4.125 Both Peru, on 5 August 1968²⁵⁷, and Chile, on 29 August 1968²⁵⁸, accepted the agreed proposal. The notes referred to the function of the ‘leading marks’ (‘marcas de enfilamiento’ – the towers) being ‘to materialise the parallel of the maritime frontier’ at the parallel of latitude on which Boundary Marker No. 1 stood²⁵⁹. The latitude and longitude co-ordinates of Boundary Marker No. 1 are mentioned in the 5 August 1930 Act²⁶⁰. The plain intention was to enable fishing vessels within about 15 miles of the coast to determine whether they were north or south of the parallel of latitude on which that 1930 land Boundary Marker stood.

²⁵⁵ See para. 4.19 above. The difference between the two prescribed distances – the three mile limit of territorial waters and the 12 mile limit for the ‘security of the country and the observance of fiscal laws’ is another clear indication of the essentially pragmatic approach to maritime matters. Annex 25.

²⁵⁶ See **Figure 4.3**.

²⁵⁷ Note No. (J)-6-4/43 of 5 August 1968, from the Secretary General of Foreign Affairs to the chargé d’affaires of Chile. Annex 74.

²⁵⁸ Note No. 242 of 29 August 1968, from the Embassy of Chile to the Ministry of Foreign Affairs of Peru. Annex 75.

²⁵⁹ *Ibid.*

²⁶⁰ Act of 5 August 1930. Annex 55.



Figure 4.3

- 4.126 The terms of the agreed proposal were repeated in the ‘Act of the Peruvian-Chilean Joint Commission in Charge of Verifying the Position of Boundary Marker No. One and Indicating the Maritime Limit’, signed by representatives of the two States and dated 22 August 1969. The Act of 22 August 1969 also set out in detail the procedure for determining the course of the parallel passing through Boundary Marker No. 1.
- 4.127 The coastal lights thus achieved the purpose of marking a line established in order to avoid near-shore fishing vessels crossing it, and thereby to avoid disputes among the fisherfolk of the two States that could arise from near-shore fishing activities. In taking these steps the two States were dealing with specific practical problems on a provisional basis.
- 4.128 Throughout this episode there is no indication whatever that the participants, or the two States, considered that they were engaged in the drawing of a definitive and permanent international boundary nor did any of the correspondence refer to any pre-existent delimitation agreement. Furthermore, it could not be implied that the starting-point of the land boundary established at Point Concordia by the 1929 Treaty of Lima was being modified by means of an Act. The focus was consistently, and exclusively, upon the practical task of keeping Peruvian and Chilean fishermen apart, and on avoiding incidents that might arise from each encroaching upon the fishing grounds that were considered to be the preserve of the other, and it is in this light that the reference to ‘materializing the parallel’ is to be read. This arrangement of a practical nature addressed the problem regarding small fisheries near the coast and represented a limited, and *ad hoc*, solution to a very specific problem within the 15-mile range of the lights. It was clearly not a maritime delimitation agreement. This was consistent with the approach to maritime claims that had been evident in Peruvian practice throughout the post-1945 period – and, indeed, before that time.

C. PHASE 3: 1980 ONWARDS

4.129 The 1980s saw the beginnings of a new phase in the international Law of the Sea. The 1982 Convention on the Law of the Sea drafted by UNCLOS III – which was in session from 1973 until 1982 – set out the new international consensus and addressed not only questions of the maritime zones and jurisdiction that might be claimed by coastal States but also the question of international maritime boundaries. Peru and Chile were among the more active States in the Conference.

4.130 On the question of international maritime boundaries, Peru's position was clearly stated. On 27 August 1980 the Head of the Peruvian delegation to UNCLOS III, Ambassador Alfonso Arias-Schreiber stated:

“Where a specific agreement on the delimitation of the territorial sea, exclusive economic zone and continental shelf between States with opposite or adjacent coasts did not exist or where there were no special circumstances or historic rights recognized by the parties, the median line should as a general rule be used, as suggested in the second revision, since it was the most likely method of achieving an equitable solution.”²⁶¹

4.131 Soon after the adoption of the 1982 Convention on the Law of the Sea, in 1986, Peru initiated discussion of the maritime boundary between Peruvian and Chilean waters. The legal environment was very different from that in the 1950s. Now, the right to establish 200-mile maritime zones was generally accepted and there was no need for common action among American South Pacific States to defend their zones against the hostility of States outside the region. More specifically, in the absence of any maritime boundary between Peru and Chile, the time was now ripe for the settlement of the lateral limits of their respective zones.

²⁶¹ Declaration by the Head of the Peruvian Delegation, Ambassador Alfonso Arias-Schreiber, at UNCLOS III, 27 August 1980. Annex 107.

4.132 In 1986 there was a high-level diplomatic presentation on the question of the need for a maritime boundary, made by a Peruvian envoy, Ambassador Juan Miguel Bákula, to the Chilean Minister of Foreign Affairs in Santiago. A subsequent Peruvian Memorandum, sent by the Peruvian Embassy to Chile with diplomatic Note No. 5-4-M/147 dated 23 May 1986, referred to the events of the 1960s and emphasized the limited scope of the line implemented at that time. It made it plain that this fisheries arrangement not only fell far short of being an agreed maritime boundary between Peru and Chile, but even fell short of adequately dealing with the administration of marine resources. The Memorandum said:

“One of the cases that merits immediate attention is the formal and definitive delimitation of the marine spaces, which complement the geographical vicinity of Peru and Chile and have served as scenario of a long and fruitful joint action.

At the current time, the existence of a special zone – established by the ‘Agreement relating to a Maritime Frontier Zone’ – referred to the line of the parallel of the point reached by the land border, must be considered as a formula which, although it fulfilled and fulfils the express objective of avoiding incidents with ‘seafarers with scant knowledge of navigation’, is not adequate to satisfy the requirements of safety nor for the better attention to the administration of marine resources, with the aggravating circumstance that an extensive interpretation could generate a notorious situation of inequity and risk, to the detriment of the legitimate interests of Peru, that would come forth as seriously damaged.”²⁶²

Spanish text reads as follows:

“Uno de los casos que merece una inmediata atención, se refiere a la delimitación formal y definitiva de los espacios marinos, que complementan la vecindad geográfica entre el Perú y Chile, y que han servido de escenario a una larga y fructífera acción común.

²⁶² Diplomatic Memorandum annexed to Note No. 5-4-M/147 of 23 May 1986, from the Embassy of Peru to the Ministry of Foreign Affairs of Chile. Annex 76.

En la actualidad, la existencia de una zona especial – establecida por la ‘Convención sobre Zona Marítima Fronteriza’ – referida a la línea del paralelo del punto al que llega la frontera terrestre, debe considerarse como una fórmula que, si bien cumplió y cumple el objetivo expreso de evitar incidentes con ‘gentes de mar con escasos conocimientos de náutica’, no resulta adecuada para satisfacer las exigencias de la seguridad ni para la mejor atención de la administración de los recursos marinos, con el agravante de que una interpretación extensiva, podría generar una notoria situación inequitativa y de riesgo, en desmedro de los legítimos intereses del Perú, que aparecerían gravemente lesionados.”

- 4.133 The Peruvian Memorandum dated 23 May 1986 drew attention to the problems flowing from the lack of an agreed maritime boundary between the two States. It did so explicitly and in detail:

“The definition of new maritime spaces, as a consequence of the approval of the Convention on the Law of the Sea, which counted with the vote of Peru and Chile, and the incorporation of its principles into the domestic legislation of countries, adds a degree of urgency, as both States shall have to define the characteristics of their territorial sea, the contiguous zone and the exclusive economic zone, as well as the continental platform, *i.e.*, the soil and subsoil of the sea, also up to 200 miles, including the reference to the delimitation of the said spaces at international level.

The current ‘200-mile maritime zone’ – as defined at the Meeting of the Permanent Commission for the South Pacific in 1954 – is, without doubt, a space which is different from any of the abovementioned ones in respect of which domestic legislation is practically non-existent as regards international delimitation. The one exception might be, in the case of Peru, the Petroleum Law (No. 11780 of 12 March 1952), which established as an external limit for the exercise of the competences of the State over the continental shelf ‘an imaginary line drawn seaward at a constant distance of 200 miles’. This law is in force and it should be noted that it was issued five months prior to the Declaration of Santiago.

There is no need to underline the convenience of preventing the difficulties which would arise in the absence of an express and appropriate maritime demarcation, or as the result of some deficiency therein which could affect the amicable conduct of relations between Chile and Peru.

Consideration of this problem is nothing new as there are express references to it in books such as that of Rear-Admiral Guillermo Faura; professor Eduardo Ferrero and Ambassador Juan Miguel Bákula. The Peruvian position was also summarized by Ambassador Alfonso Arias Schreiber, at the Conference on the Law of the Sea, when favouring the criteria incorporated in the draft Convention on the Law of the Sea, in relation to the delimitation of the territorial sea, the exclusive economic zone and the continental shelf (26 August 1980). However, this step constitutes the first presentation, via diplomatic channels, which the Government of Peru formulates before the Government of Chile based on the reasons and circumstances set out in the opening paragraphs of this memorandum.”²⁶³

Spanish text reads as follows:

“La definición de nuevos espacios marítimos, como consecuencia de la aprobación de la Convención sobre el Derecho del Mar, que contó con el voto del Perú y de Chile, y la incorporación de sus principios a la legislación interna de los países, agrega un nivel de urgencia, pues ambos Estados deberán definir las características de su mar territorial, de la zona contigua y de la zona económica exclusiva, así como de la plataforma continental, o sea el suelo y el subsuelo del mar, también hasta las 200 millas, incluyendo la referencia a la delimitación de dichos espacios en la vecindad internacional.

La actual ‘zona marítima de 200 millas’ – como la definió la Reunión de la Comisión Permanente del Pacífico Sur en 1954 – es, sin duda, un espacio diferente de cualquiera de los anteriormente mencionados, respecto de los cuales la legislación interna es prácticamente inexistente en lo que se refiere a la

²⁶³ *Ibid.*

delimitación internacional. Quizás, la excepción podría ser, en el caso del Perú, la Ley de Petróleo (Nº 11780 de 12 de marzo de 1952), que estableció como límite externo para el ejercicio de las competencias del Estado en el zócalo continental, ‘una línea imaginaria trazada mar afuera a una distancia constante de 200 millas’. Esta ley está en vigencia y debe anotarse que fue expedida cinco meses antes de la Declaración de Santiago.

No es necesario subrayar la conveniencia de prevenir las dificultades que se derivarían de la ausencia de una demarcación marítima expresa y apropiada, o de una deficiencia en la misma que podría afectar la amistosa conducción de las relaciones entre Chile y el Perú.

La consideración de este problema no representa una novedad, pues hay expresas referencias a él en libros como el del Contralmirante Guillermo Faura; el profesor Eduardo Ferrero y el Embajador Juan Miguel Bákula. La posición peruana fue, asimismo, resumida por el Embajador Alfonso Arias Schreiber, en la Conferencia sobre el Derecho del Mar, al favorecer los criterios incorporados al proyecto de Convención sobre el Derecho del Mar, en relación con la delimitación del mar territorial, la zona económica exclusiva y la plataforma continental (26 de agosto de 1980). Sin embargo, esta gestión, constituye la primera presentación, por los canales diplomáticos, que el Gobierno del Perú formula ante el Gobierno de Chile, fundada en las razones y circunstancias que se han expresado en los primeros párrafos de este memorándum.”

Chile did not reject this proposal, as might have been expected if it was confident of the existence of a maritime boundary with Peru. Its response was to make an official public declaration that said that “studies on this matter shall be carried out”²⁶⁴.

4.134 The following year, in 1987, Chile adopted a measure that is difficult to reconcile with an open-minded study of the question. A Chilean measure, annexed to Supreme Decree No. 991, established the limits of the jurisdiction

²⁶⁴ Official Communiqué of the Ministry of Foreign Affairs of Chile, published in Chilean Journal *El Mercurio* of 13 June 1986. Annex 109.

of a Chilean harbour authority and referred to “the Chile-Peru international political limit on the North”²⁶⁵. There was no indication of what, in juridical terms, this “international political limit” was, or of the legal basis for it, or of where it was thought to be located. Moreover, it was only in 1994 that Chile began to modify its charts to depict any such limit, as will be shown in the next chapter, where Chile’s mapping practice is discussed.

4.135 The view that there was no boundary between the maritime zones of Chile and Peru was confirmed again five years later. In 1998 Chile enacted Supreme Decree No. 210²⁶⁶. That Decree established a number of “benthonic resources management and exploitation areas” in the waters off the Chilean coast. The area closest to the Peru-Chile land boundary lies within the coordinates listed in Article 1 of the Decree. The boundary of that area runs in a southwest direction from a point with the co-ordinates 18°21'11,00" S, 70°22'30,00" W. The boundary of the Chilean benthonic area then proceeds seaward for approximately two kilometres in a direction that is approximately perpendicular to the general direction of the coast²⁶⁷, which is quite different of any parallel of latitude. That is consistent with the position that Peru had adopted eighteen years earlier at UNCLOS III²⁶⁸.

4.136 A little later, in 2000, Peru protested against a 1998 Chilean chart which appeared to treat the parallel of latitude passing through Boundary Marker No. 1 of the Peru-Chile land border as the ‘maritime boundary’.²⁶⁹

²⁶⁵ Supreme Decree No. 991 of 26 October 1987. Annex 37. (Spanish text: “el límite político internacional Chile-Perú por el Norte”).

²⁶⁶ Supreme Decree No. 210 of 4 May 1998. Annex 40.

²⁶⁷ See **Figure 4.4**.

²⁶⁸ See para. 4.130 above.

²⁶⁹ Note RE (GAB) No. 6-4/113 of 20 October 2000, from the Ministry of Foreign Affairs of Peru to the Embassy of Chile. Annex 77.

- 4.137 In July 2004 Peru again formally proposed to Chile that negotiations be started on the establishment of a maritime boundary between the two States²⁷⁰. Chile refused to enter into negotiations on the matter²⁷¹. Both States reiterated their positions in later diplomatic exchanges.
- 4.138 On 4 November 2004 the Peruvian and Chilean Foreign Ministers confirmed what was already obvious and “reiterated that the subject of maritime delimitation between both countries, in respect of which we have different positions, is a question of juridical nature”²⁷².

III. Concluding Observations

- 4.139 Peru’s legal submissions based on this record of dealings between the Parties are set out in the following chapters; but it is convenient here to summarize certain points.
- 4.140 The starting-point for the analysis is the axiomatic principle that Peru is entitled to a 200-mile maritime zone. It would need very clear evidence, supporting sound legal analysis, to deprive Peru of any part of that entitlement. There is no such evidence.
- 4.141 *First*, the fundamental fact in this case is that Peru and Chile have not reached agreement upon the delimitation of their international maritime boundary. Yet Chile asserts that it, and not Peru, has rights in an area in front of the Peruvian coast. The fundamental question in this case is, therefore, how could Peru have lost its rights over that area in front of its coast?

²⁷⁰ Note (GAB) No. 6/43 of 19 July 2004, from the Minister of Foreign Affairs of Peru to the Minister of Foreign Affairs of Chile. This document is Annex 1 to the Application. It is joined anew for the convenience of the Court as Annex 79.

²⁷¹ Note No. 16723 of 10 September 2004, from the Minister of Foreign Affairs of Chile to the Minister of Foreign Affairs of Peru. This document is Annex 2 to the Application. It is joined anew for the convenience of the Court as Annex 80.

²⁷² Joint Communiqué of the Ministers of Foreign Affairs of Peru and Chile, Rio de Janeiro, 4 November 2004. Annex 113. (Spanish text: “Los Cancilleres hemos reafirmado que el tema de la delimitación marítima entre ambos países, respecto del cual tenemos posiciones distintas, es una cuestión de naturaleza jurídica”).

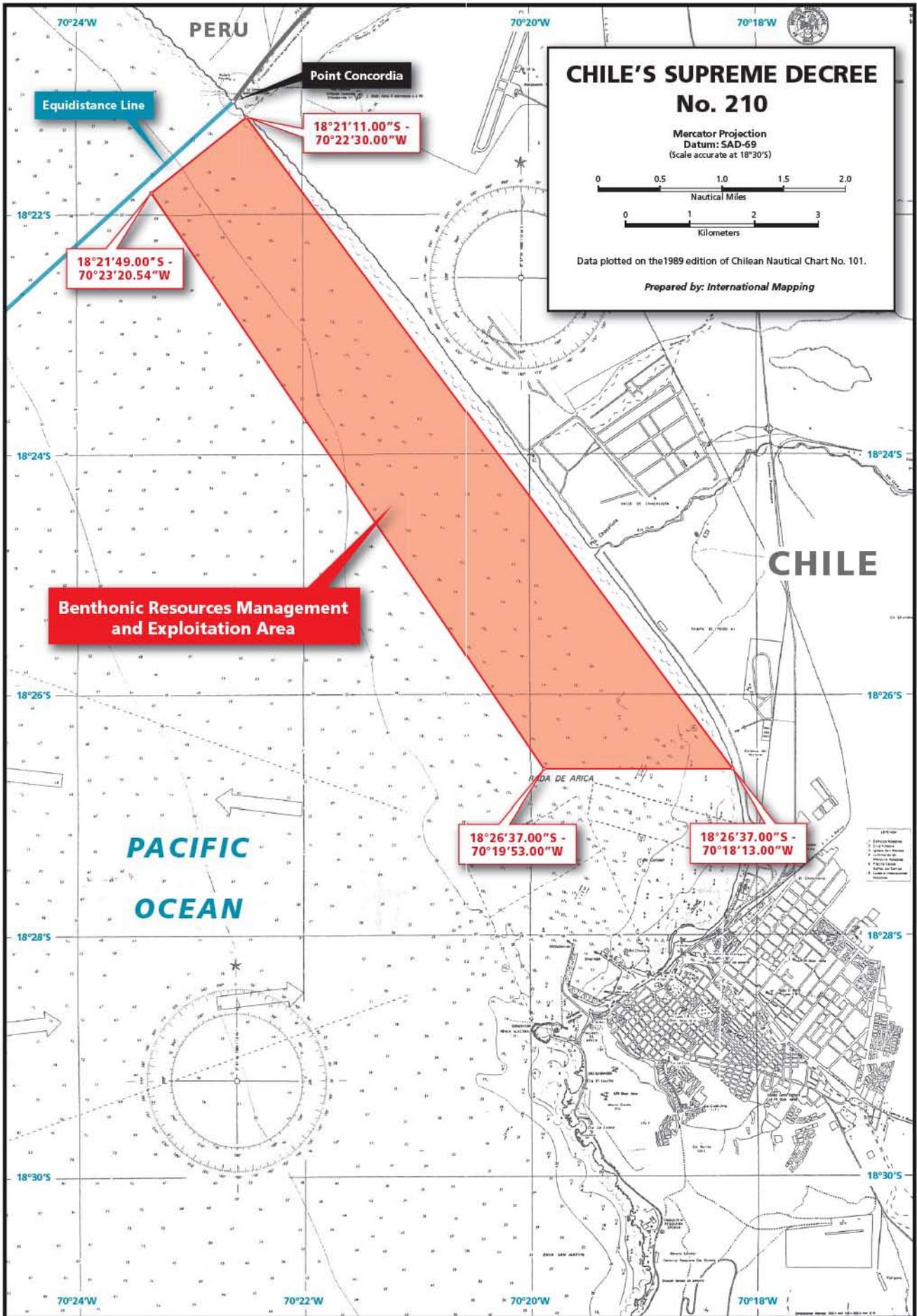


Figure 4.4

(a) A coastal State is indeed free to relinquish its sovereign rights over either its continental shelf or its EEZ, for example by agreeing to transfer them to another State by way of sale or gift. But the geographical extent of a State's sovereignty (or sovereign rights) is central to its very existence and, as a matter of principle, any such transfer is a matter requiring the clearest evidence and proof. Sovereignty or sovereign rights are not to be regarded as having been given up inadvertently or by accident, or incidentally to some other transaction, or on a 'balance of probabilities' basis: clear evidence and proof is needed that sovereignty was, and was intended to have been, given up to another State. There is no such proof, and there was no such intention, in this case.

(b) The words of the Court in the *Pedra Branca* case may be recalled:

“Critical for the Court’s assessment of the conduct of the Parties is the central importance in international law and relations of State sovereignty over territory and of the stability and certainty of that sovereignty. Because of that, any passing of sovereignty over territory on the basis of the conduct of the Parties, as set out above, must be manifested clearly and without any doubt by that conduct and the relevant facts. That is especially so if what may be involved, in the case of one of the Parties, is in effect the abandonment of sovereignty over part of its territory.”²⁷³

That wise and trenchant observation applies, *mutatis mutandis*, to boundaries between the zones of sovereign rights of States, whose economic and political importance is as great as that of land territory.

(c) That point was recognized by the Court in the *Nicaragua v. Honduras* case, where it said that:

“The establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed.

²⁷³ *Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, I.C.J. Judgment of 23 May 2008, para. 122.

A *de facto* line might in certain circumstances correspond to the existence of an agreed legal boundary or might be more in the nature of a provisional line or of a line for a specific, limited purpose, such as sharing a scarce resource. Even if there had been a provisional line found convenient for a period of time, this is to be distinguished from an international boundary.”²⁷⁴

(d) The observation is, moreover, part of the *jurisprudence constante* of the Court. Thus, in the *Gulf of Maine* case the Court held that:

“No maritime delimitation between States with opposite or adjacent coasts may be effected unilaterally by one of those States. Such delimitation must be sought and effected by means of an agreement, following negotiations conducted in good faith and with the genuine intention of achieving a positive result.”²⁷⁵

(e) There is no agreement on the maritime boundary between Peru and Chile. Despite Peru’s invitations, there have been no negotiations on the maritime boundary between Peru and Chile. No boundary was set by the simultaneous claims of the two States in 1947. The 1952 Declaration of Santiago did not settle the question of the maritime boundary. Nor did the 1954 Agreement on a Special Zone. The 1954 Agreement on a Special Zone embodied a practical and provisional arrangement for policing coastal fisheries, which Peru has applied in good faith, as the record of State practice clearly shows: but they did not and do not embody an agreement on the international maritime boundary.

²⁷⁴ *Case Concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea*, I.C.J. Judgment of 8 October 2007, para. 253. See also *Case Concerning Maritime Delimitation in the Black Sea*, I.C.J. Judgment of 3 February 2009, paras. 71-76.

²⁷⁵ *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, Judgment, I.C.J. Reports 1984, p. 299, para 112. See also the Court’s observations in the *North Sea Continental Shelf* cases, referred to in para. 6.4 below.

(f) In the absence of an established boundary the Peru-Chile maritime boundary is, therefore, to be determined by the Court, by the application of the relevant principles of international law – that is, on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

4.142 *Second*, there is an uneven record of diplomatic and legal activity on the part of Peru and Chile in relation to their maritime zones. What is clear beyond doubt is that there is no consistent record from which the agreement of the two States on an international maritime boundary can be inferred. Such activity as occurred was directed not at the establishment of a maritime boundary between them but at the consolidation and defence of the seaward limit of their zones vis-à-vis third States, and at the adoption of practical steps to minimize friction between near-shore fishermen in waters in the general area of their land boundary.

4.143 *Third*, the recorded dealings between the States concerned fisheries matters – and, indeed, were focused on fishing activity in waters relatively close to the shore, not activities out to 200 nautical miles. Moreover, not one of them related to the question of the extent of the sea-bed or subsoil which belongs *ipso facto* and *ab initio* to each State.

4.144 For these reasons, it is Peru's submission that the record demonstrates that there was and is no international maritime boundary established between Peru and Chile. That boundary remains to be delimited by the Court, and by the application of the relevant principles of international law.

CHAPTER V

THE MAP EVIDENCE CONFIRMS THAT THERE IS NO PRE-EXISTING MARITIME DELIMITATION BETWEEN THE PARTIES

I. Introduction

- 5.1 In this chapter, Peru will show that the official cartography of the Parties confirms that there is no pre-existing maritime delimitation between them. Section II discusses the fact that, contrary to normal State practice and, indeed, to Chile's own delimitation practice, no map has ever been issued jointly by the Parties depicting a maritime boundary between them as part of a maritime delimitation agreement. In Section III, Peru will then review the official cartography of both Parties to show that Peru has never published any official map indicating that a delimited maritime boundary exists between itself and Chile and that, for some 40 years after the 1952 Declaration of Santiago and 1954 instruments were concluded, Chile published no such map either. It was only in 1992 that Chile, in a belated and self-serving fashion, began to change its cartography by publishing a map relating to its "Presential Sea" claim which purported to show a maritime boundary between itself and Peru extending along a line of latitude.

II. Contrary to Chile's Own Practice, There Was No Delimitation Map Accompanying the 1952 or 1954 Instruments

5.2 The previous chapter has shown that there was no agreement on maritime delimitation between Peru and Chile either in the 1952 Declaration of Santiago or in the 1954 Agreement on a Special Zone. Neither Peru nor Chile conducted itself at the time as if it considered that the two States were concluding a formal maritime delimitation agreement. No details of any delimitation line were specified by the Parties, no co-ordinates or other technical information were indicated regarding the course or endpoint of the boundary, and no map was attached to either instrument depicting an agreed delimitation line.

5.3 International law attributes considerable importance to maps that are attached to, and form an integral part of, an international boundary agreement. As the Chamber stated in its Judgment in the *Burkina Faso-Mali* case with respect to the intrinsic legal force of maps for the purpose of establishing territorial rights:

“Of course, in some cases maps may acquire such legal force, but where this is so the legal force does not arise solely from their intrinsic merits: it is because such maps fall into the category of physical expressions of the will of the State or States concerned. This is the case, for example, when maps are annexed to an official text of which they form an integral part.”²⁷⁶

5.4 In the present case, and considering the reasoning of the Chamber *a contrario*, the absence of a map attached to either the 1952 Declaration of Santiago or the 1954 Agreement on a Special Zone depicting a maritime boundary, when coupled with the absence of other details ordinarily found in maritime delimitation agreements, is significant. This is particularly the case where the practice of one of the Parties – Chile – demonstrates that when Chile intended to enter into a formal and binding maritime delimitation agreement, it took care to set out the details of the delimitation line in the text of the

²⁷⁶ *Frontier Dispute, Judgment, I.C.J. Reports 1986*, p. 582, para. 54.

agreement itself and to attach an illustrative map of the boundary which formed an integral part of the agreement.

- 5.5 It will be recalled that in the Salta Declaration of 24 July 1971, the Presidents of Chile and Argentina reaffirmed the rights of both countries to establish their jurisdiction over the sea adjacent to their coasts up to a distance of 200 nautical miles taking into account the preservation and exploitation of the resources of the sea²⁷⁷. Much like the 1952 Declaration of Santiago, this was a Declaration of principle regarding the seaward extent of the parties' maritime entitlements not an instrument dealing with the delimitation of the maritime boundary between them.
- 5.6 The delimitation of the maritime boundary, in contrast, was the subject of a subsequent, specific delimitation treaty between Chile and Argentina concluded in 1984²⁷⁸. This agreement included all of the details of the delimitation and illustrative map.
- 5.7 Article 7 of that 1984 Treaty established the maritime boundary (dealing with sovereignty over the sea, sea-bed and subsoil) between Chile and Argentina seaward from the end of the existing boundary in the Beagle Channel that had been decided in an earlier arbitration. It specified by co-ordinates six points through which the delimitation line ran, and it left open the potential prolongation of the boundary beyond the final, or most seaward, point by stipulating that the EEZ of Chile shall extend south of the last point fixed by the agreement "up to the distance permitted by international law". Article 7 also stated that the maritime boundary so described was shown on a map that was annexed to the agreement as Map No. 1. Article 17 of the Treaty, in turn, provided that the map referred to in Article 7 formed an integral part of the Treaty. A copy of the relevant map attached to the Chile-Argentina Treaty is reproduced as **Figure 5.1**.

²⁷⁷ See para. 3.28 above.

²⁷⁸ Treaty of Peace and Friendship between Chile and Argentina, 29 November 1984. Annex 53.

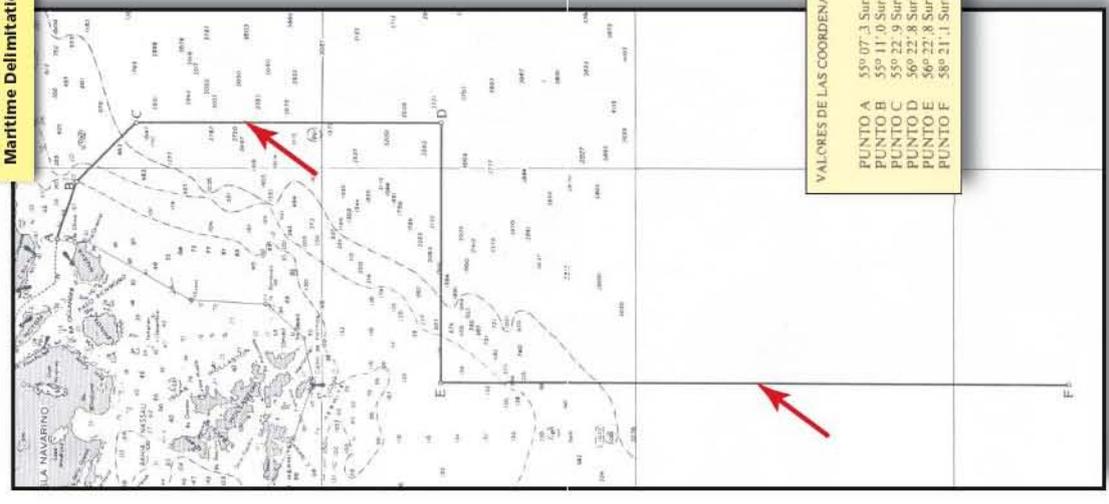
- 5.8 Nothing of the kind exists with respect to any alleged pre-existing maritime boundary between Peru and Chile. There is no agreed map showing the course of a boundary line, no detailed description of the delimitation line, no description of what maritime zone or zones were being delimited and no indication of the endpoint of the boundary.
- 5.9 When considered in connection with the fact that for some 40 years after the 1952 Declaration of Santiago and the 1954 Agreement on a Special Zone were signed Chile issued no map purporting to depict a maritime boundary with Peru²⁷⁹, these facts confirm that there is no maritime boundary between the Parties in existence.

III. The Cartography of the Parties

- 5.10 For its part, Peru has not published official maps depicting a maritime boundary between itself and Chile. This is entirely consistent with the fact that no delimitation agreement has ever been concluded between the Parties and that the 1952 and 1954 instruments did not constitute delimitation agreements. In short, both before 1952 and afterwards, official maps issued by Peru show no maritime boundary.
- 5.11 Chile's own mapping practice has been equally consistent, at least up until 1992 when Chile published a map illustrating its claim to a "Presential Sea" in which a "maritime boundary" with Peru was implied. Thereafter, starting in 1994, Chile also began to change its nautical charts to depict an alleged maritime boundary between itself and Peru. In other words, as far as Peru is aware, for some 40 years after the 1952 and 1954 instruments were concluded, Chile never published any map or chart depicting an existing maritime boundary with Peru. It was only in 1992 that Chile's cartography began to change in a self-serving manner.

²⁷⁹ See paras. 5.18 *ff.*

MAP No.1
Annexed to the Chile/Argentina
Maritime Delimitation Treaty of 1984



CARTA N°01



Figure 5.1

- 5.12 To illustrate the position, Peru has included herein a number of representative maps of the Parties. A more extensive compendium of the relevant maps may be found in the Maps and Figures Annex included as Volume IV to this Memorial.

A. PERU'S MAPS

- 5.13 In Peru, official political maps representing boundaries may only be published with the approval of the Ministry of Foreign Affairs²⁸⁰. As noted above, at no point has Peru's official cartography ever depicted a maritime boundary with Chile. This was the case before the 1952 Declaration of Santiago was signed and afterwards as well.
- 5.14 In the period after the 1929 Treaty of Lima the map of Peru published by the Geographical Service of the Army in 1938 (**Figure 5.2** in Volume IV) shows the land boundary between Peru and Chile agreed in 1929 but, evidently, no maritime boundary offshore. Other similar maps published for the most part by the Military Geographic Institute of Peru in 1952, 1953 and 1967 are included in Volume IV as **Figures 5.3, 5.4** and **5.5**, and also depict no maritime boundary.
- 5.15 For example, the map entitled "Republic of Peru, 1967, Political Map", published in that year by the Military Geographic Institute of Peru, indicates very clearly *Concordia* as the starting-point of the land boundary established pursuant to the 1929 Treaty of Lima and shows no maritime boundary with Chile. It is **Figure 5.5** in Volume IV.

²⁸⁰ This provision was established during the fifties by means of Supreme Decree No. 570 of 5 July 1957. Annex 11.

- 5.16 The 1989 edition of the *Atlas of Peru* published by the Ministry of Defence and the National Geographic Institute also depicts no maritime boundary between Peru and Chile. As one of the plates taken from that Atlas, reproduced as **Figure 5.6** in Volume IV, shows, the starting-point of the land boundary is situated at *Concordia*²⁸¹, but no maritime boundary is shown extending seaward of that point.
- 5.17 All of these maps are conspicuous for the complete absence of any maritime boundary existing between the Parties. This is significant given the fact that the maps otherwise show Peru's political boundaries and that Peru claimed sovereignty over the maritime domain lying off its coasts. Had an international boundary with Chile existed, it would be expected to be depicted on these official Peruvian maps, which it is not.

B. CHILE'S MAPS

- 5.18 Chile's official cartography, at least up until 1992, also reveals no trace of a pre-existing maritime boundary with Peru.
- 5.19 Early twentieth century Chilean maps, such as **Figure 5.7** in Volume IV (which is labelled "Republic of Chile 1935"), shows no maritime boundary between the Parties. The same situation is depicted on **Figure 5.8**, reproduced here. It is a large-scale 1941 map of the northern part of Chile in the vicinity of the town of Arica and the land boundary with Peru. While no maritime boundary is shown, the map does show the starting-point on the land boundary which is clearly labelled *Concordia* on the map.

²⁸¹ The map labels the point where the land boundary meets the sea as 'Hito Concordia' ('Marker Concordia'). However, 'Marker Concordia' is Marker No. 9, and is located about 7 kms. far from the shore.

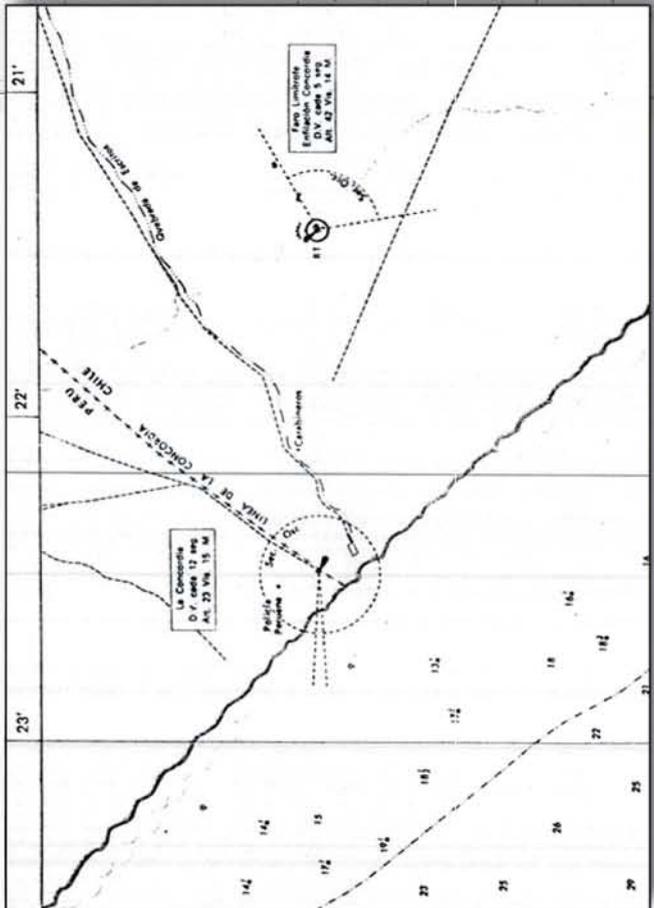
- 5.20 Chile's maps did not change after the conclusion of the 1952 Declaration of Santiago and the 1954 Agreement on a Special Zone. **Figure 5.9** and **5.10** in Volume IV are official Maps dating from 1954 and 1955, published by the Military Geographic Institute of Chile²⁸². Neither of them shows a maritime boundary. For example, **Figure 5.10** is a 1955 map which again depicts the starting-point on the land boundary as lying at *Concordia* in accordance with the 1929 Treaty of Lima, but it shows no maritime boundary seaward of that point. Similar maps included in Volume IV, dated 1961, 1963, 1966, 1971, 1975 and 1977 as **Figures 5.12, 5.13, 5.14, 5.15, 5.16** and **5.17**, are all noteworthy for the absence of any indication that a maritime boundary existed between Peru and Chile at the time. Also included in Volume IV is a 1989 map entitled "Political Administrative Map of Chile" published by the Chilean Military Geographic Institute. It, too, is conspicuous for the absence of any maritime boundary²⁸³.
- 5.21 Turning to Chile's large-scale nautical charts of the boundary region in the vicinity of the land boundary, **Figure 5.19**, reproduced here, is a 1973 edition of Chart No. 101 labelled *Arica*. As can be seen from the enlargement of the relevant portion of the chart, no maritime boundary is depicted, and the land boundary can be seen to extend in an arc over its last part to the point where it meets the sea pursuant to the 1929 Treaty of Lima. There are two dashed lines on the map extending from Boundary Marker No. 1. These lines indicate the range of visibility of the light beacon established a short distance inland from the sea, not a maritime boundary, but this light beacon does not correspond to the actual starting-point on the land boundary, which can be seen on the Chart as lying further to the south.
- 5.22 On 25 May 1979, Chile issued a somewhat smaller-scale chart (Chart No. 100) covering the area from the *Rada de Arica* down to *Bahía Mejillones del Sur* located further to the south. This chart is reproduced as **Figure 5.20** here, and it too depicts no maritime boundary between Peru and Chile.

²⁸² The same can be seen in 1959 Map revised by the Military Geographic Institute of Chile, included as **Figure 5.11**.

²⁸³ See **Figure 5.18** in Vol. IV.

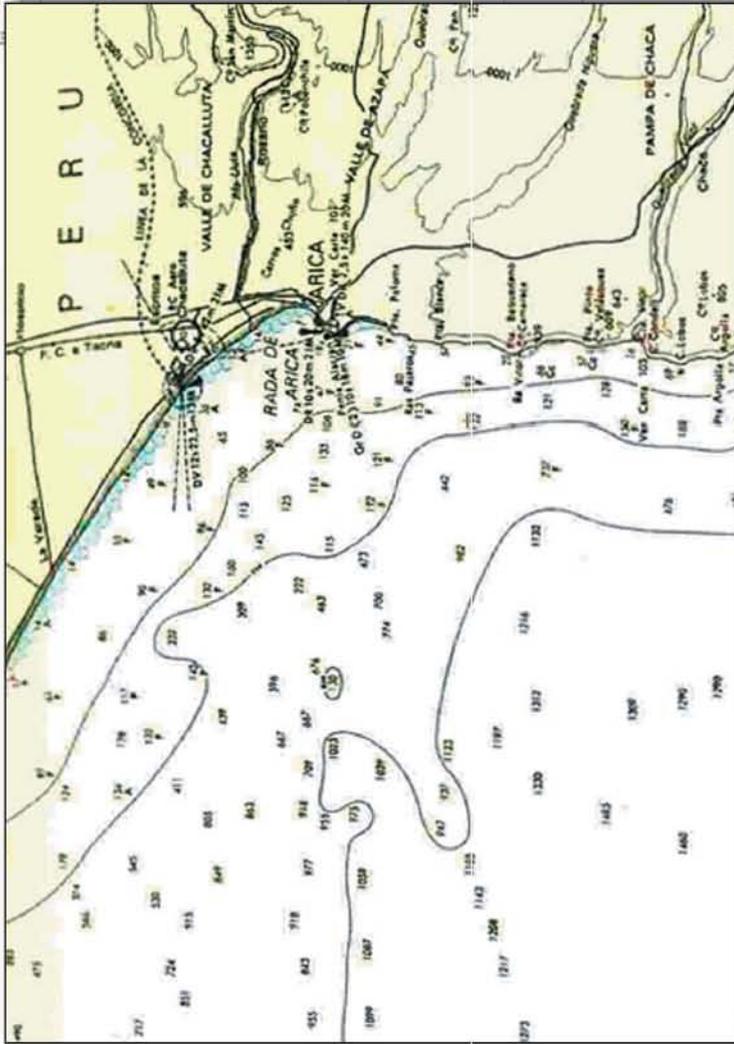
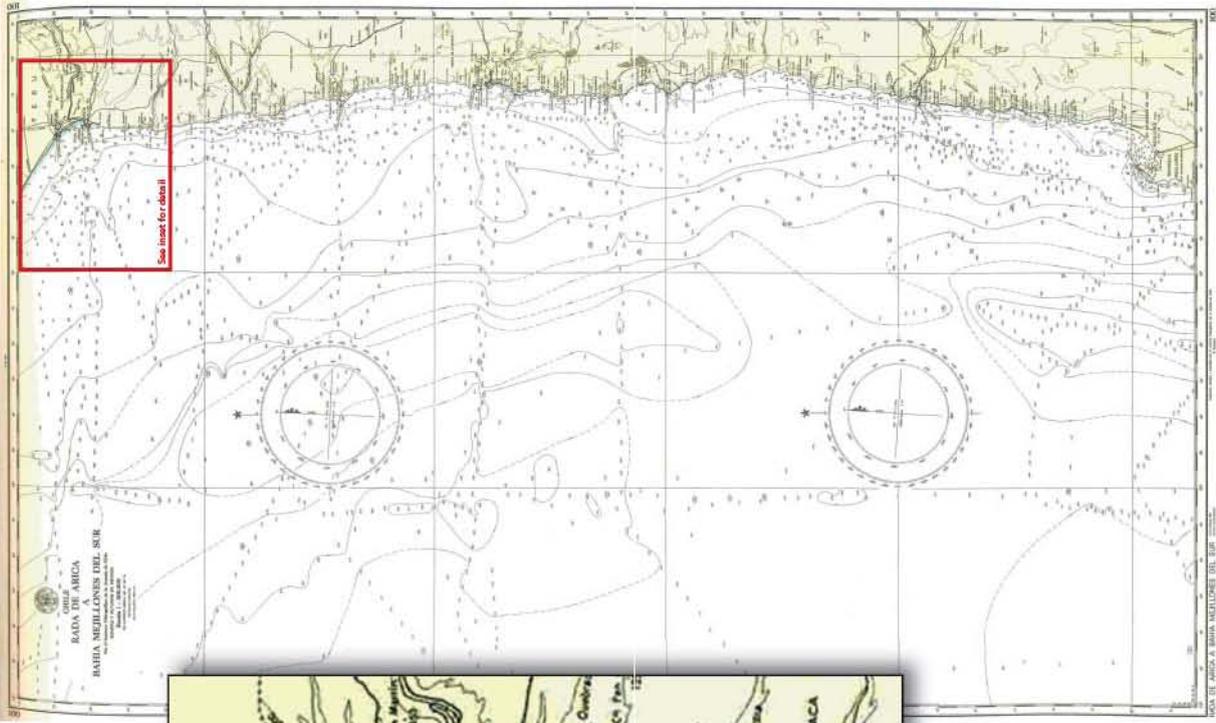
- 5.23 The same thing can be seen on Chile's Chart dated 20 November 1979 covering the area identified as the *Rada de Arica a Bahía de Iquique*. Once again, no maritime boundary appears on the chart which is attached as **Figure 5.21** in Volume IV.
- 5.24 As noted in Section II above, in 1984 Chile and Argentina concluded a formal maritime boundary agreement seaward of the boundary decided in the Beagle Channel Arbitration which included a map depicting the delimitation line. Consequently, Chile's large-scale charts of this area dated 1986 began to depict this boundary with Argentina, as can be seen in **Figure 5.22**. At the same time, however, Chile's charts of the Arica region in the vicinity of the land boundary with Peru continued to show no similar maritime boundary with Peru, as can be seen in the 1989 Chilean Chart *Rada y Puerto Arica* reproduced as **Figure 5.23**.
- 5.25 To Peru's knowledge, it was only in 1992 that Chile began to change its mapping with regard to the relevant area²⁸⁴. **Figure 7.3** in Volume IV is a very small scale graphic prepared by the Hydrographic and Oceanographic Service of the Chilean Navy in 1992 for the purpose of illustrating Chile's "Presential Sea" theory. While the map is not easy to read, it appears to include a line in the north extending from the land boundary between Peru and Chile out to sea.
- 5.26 The situation became clearer when, in 1994, Chile re-issued its former Chart No. 100 (*Rada de Arica a Bahía de Mejillones del Sur* as a new series (Chart No. 1000)). A copy of the relevant portion of this Chart appears as **Figure 5.24**. It showed for the first time a dashed line extending seaward west of the land boundary with the words "Peru" and "Chile" placed on the map to the north and south of the dashed line, respectively.

²⁸⁴ See para. 5.11 above.



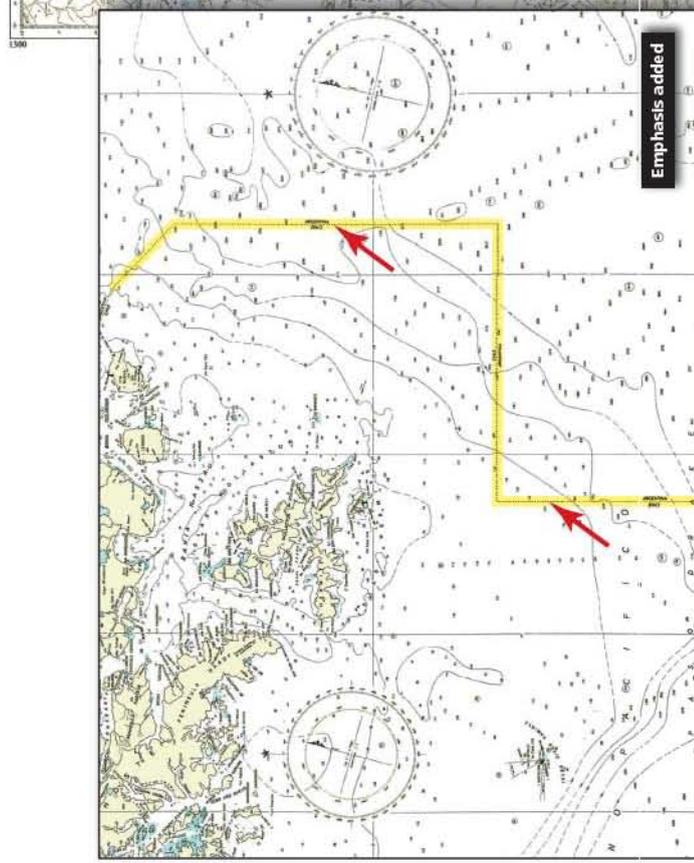
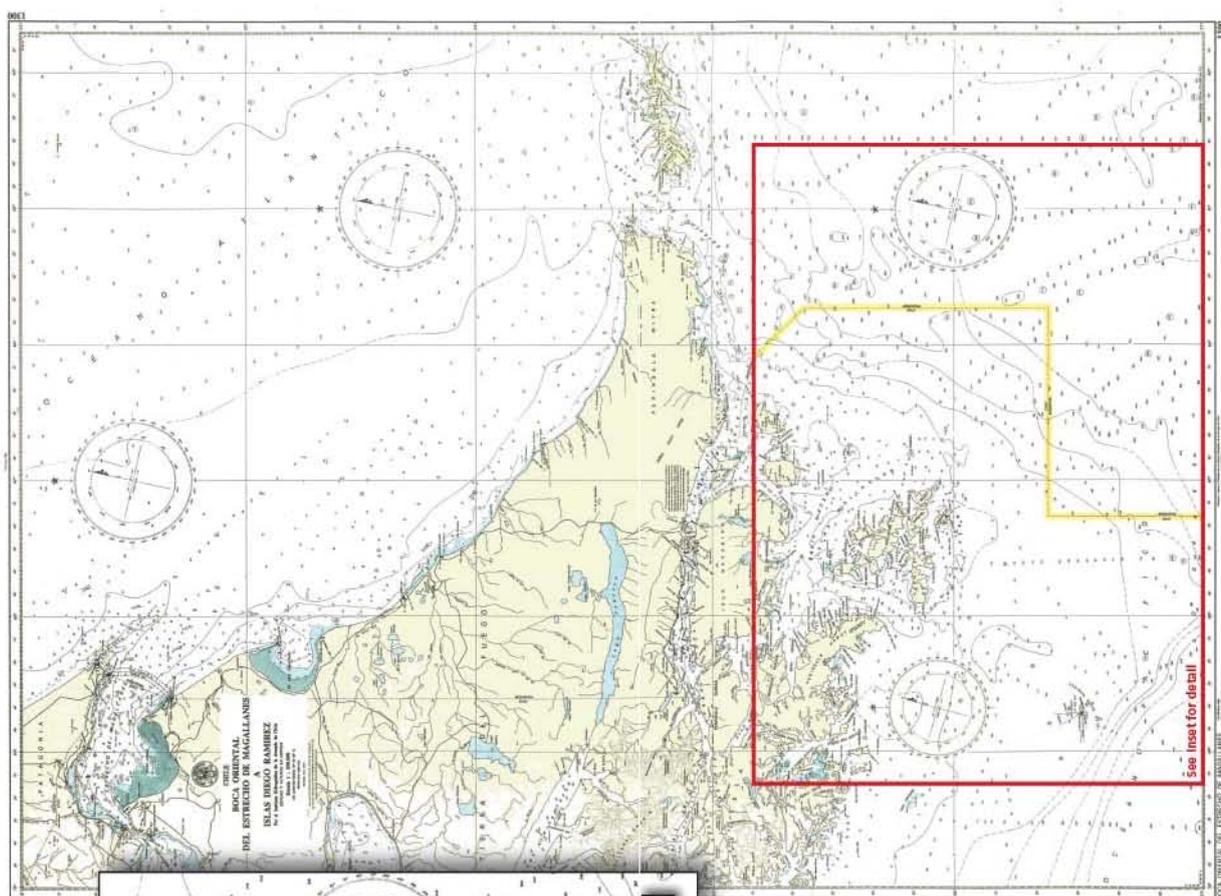
ARICA 1973
Chilean Nautical Chart 101

Figure 5.19



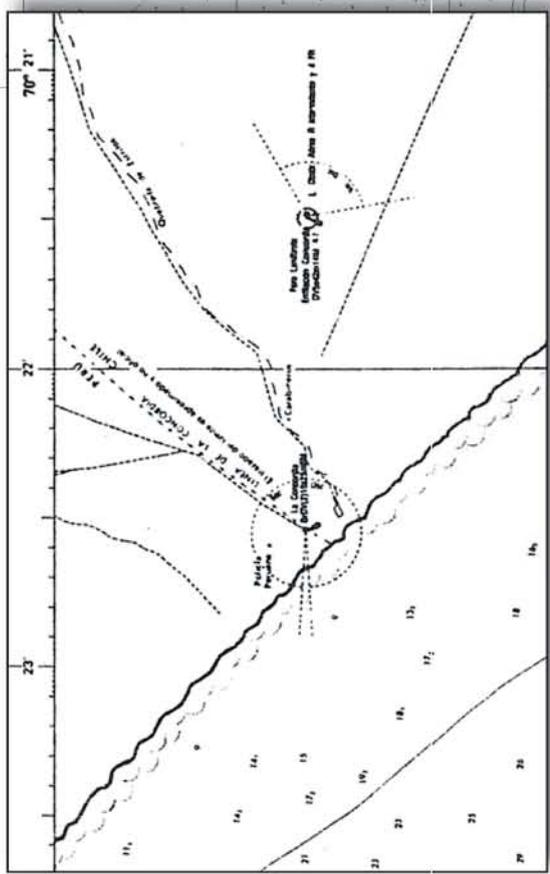
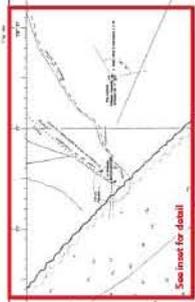
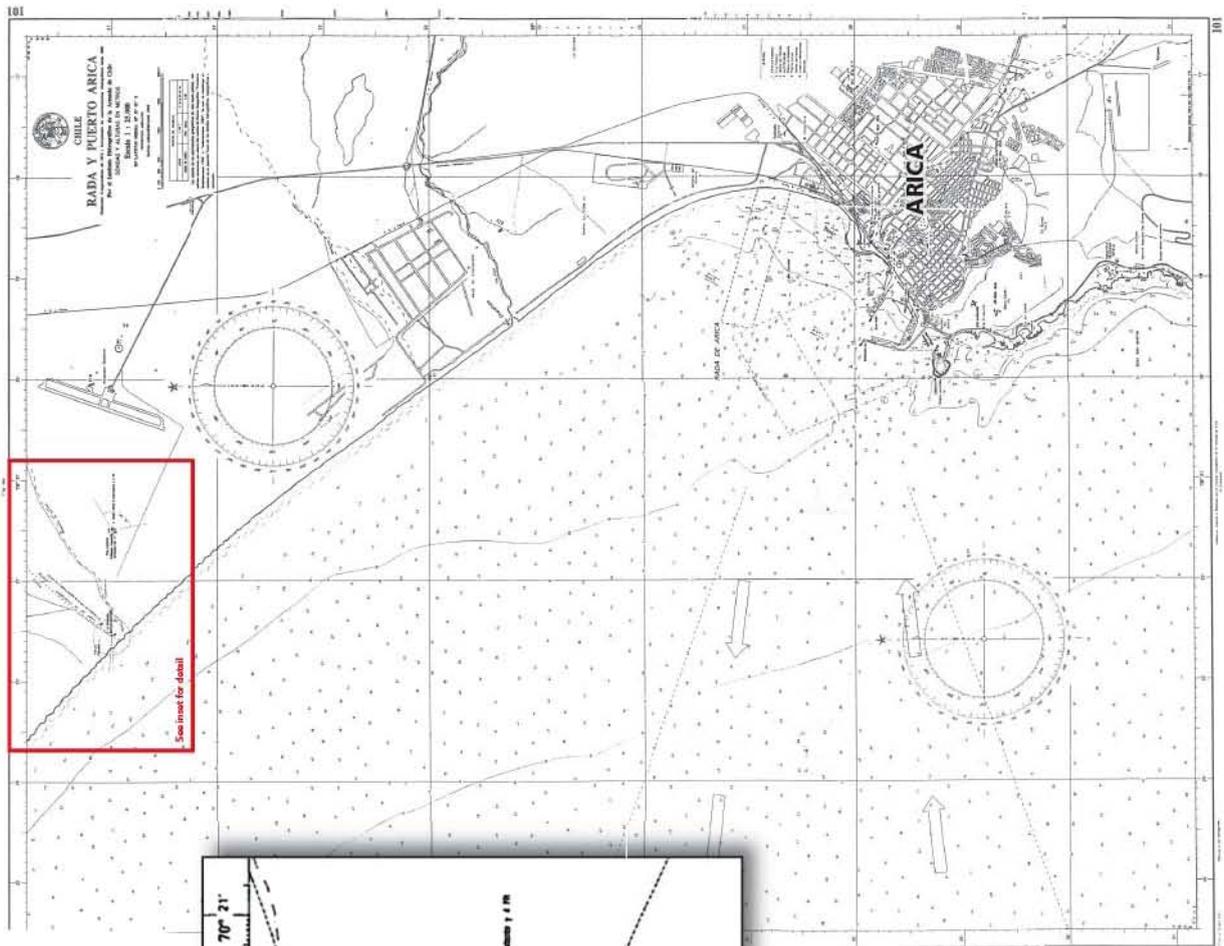
RADA DE ARICA
Chilean Nautical Chart No. 100
May 1979

Figure 5.20



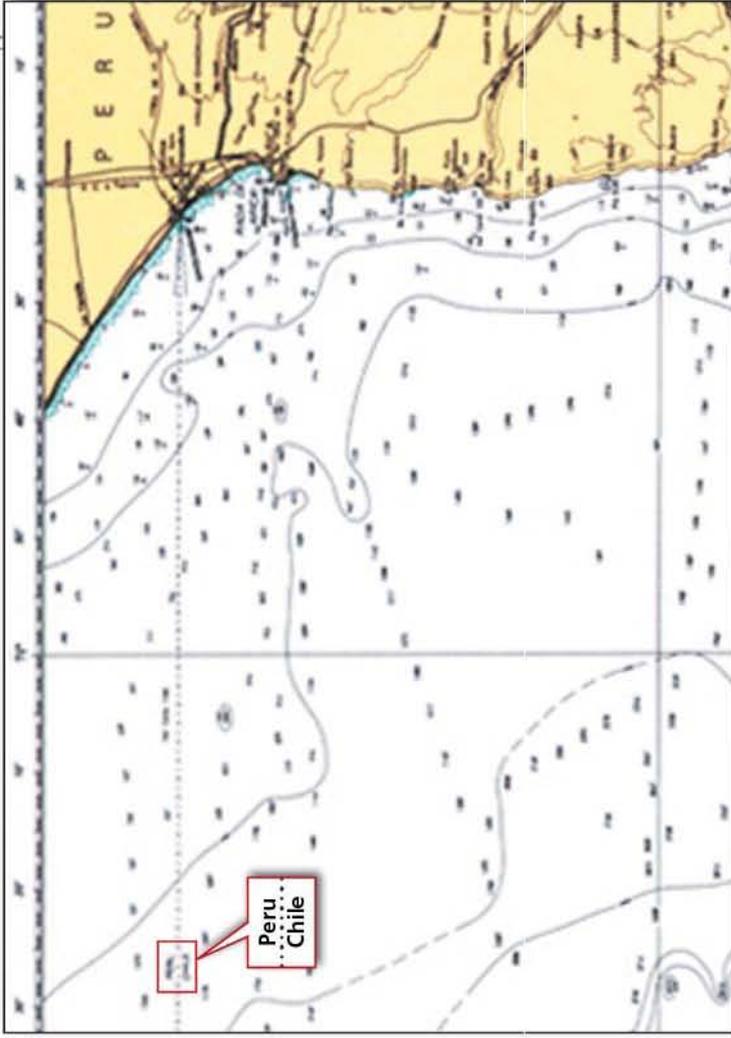
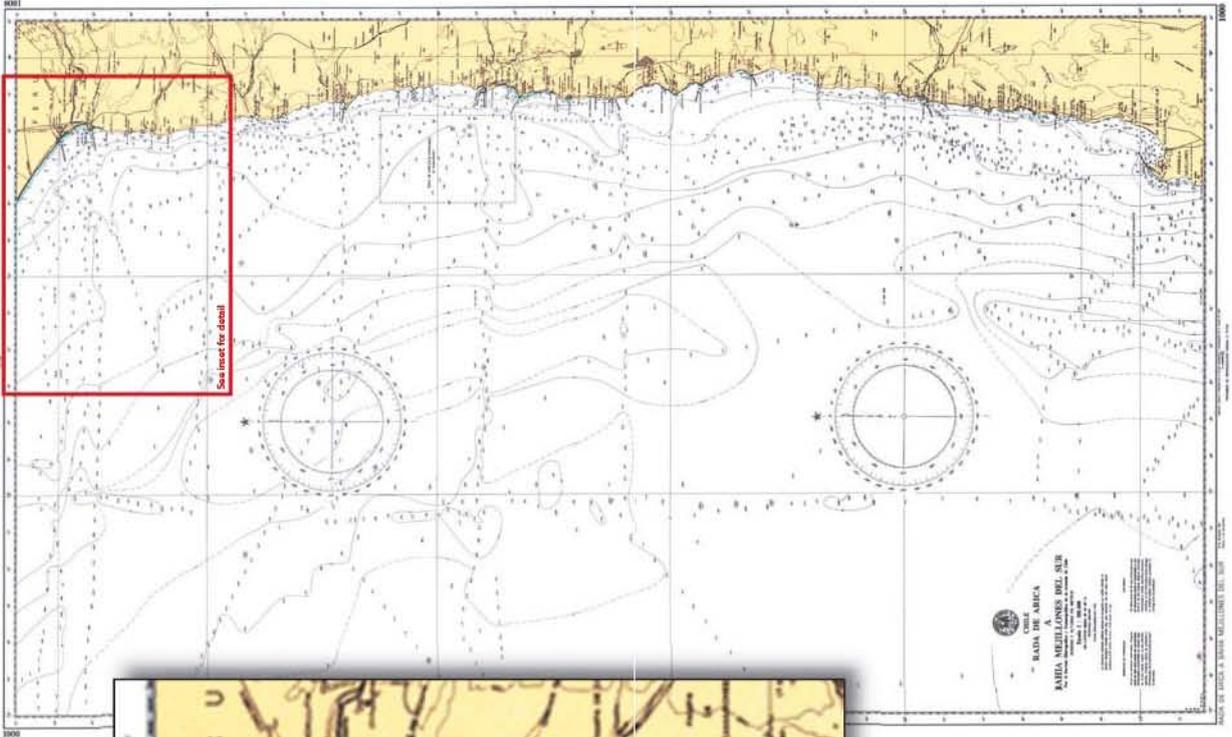
**CHILE-ARGENTINA MARITIME
BOUNDARY AGREEMENT: 1984**
1986 Chilean Nautical Chart No. 1300

Figure 5.22



RADA Y PUERTO ARICA 1989
Chilean Nautical Chart 101

Figure 5.23



RADA DE ARICA 1994
Chilean Nautical Chart 1000

Figure 5.24

- 5.27 In 1998, Chile made a similar change to its Chart of the Port of Arica area (Chart No. 1111, which was a new edition of the former Chart 101). This can be seen on **Figure 5.25** in Volume IV, the enlargement of which shows for the first time on this series of Chilean charts a dashed line extending out to sea from the land boundary. As noted in Chapter IV, Peru protested the issuance of this Chart and the “boundary line” that appeared on it²⁸⁵.
- 5.28 Moreover, the depiction of the initial segment of the land boundary was also changed from what had previously been shown on the 1973 edition of the Chart. Whereas previous editions of the chart showed the land boundary as extending along an arc to a point where it meets the sea to the south of the first boundary marker on land, the 1998 edition suppressed this extension and drew the land boundary as if it met the sea along a parallel of latitude passing through the Boundary Marker No. 1. This change in Chile’s cartography was in contravention to the provisions of the 1929 Treaty of Lima discussed in Chapter I²⁸⁶, and inconsistent with Chile’s earlier mapping.
- 5.29 Later editions of Chile’s maps also began to reflect this unilateral change of position. For example, in 2005 the *National Atlas of Chile* evidenced the change in Chile’s position by showing a “Limit Chile-Peru” extending to sea from what Chile labelled “Hito”, or Marker, No. 1.²⁸⁷ Earlier editions of the Chilean *National Atlas* had not depicted such a line.
- 5.30 From the above, it can be seen that Chile’s official maps up to 1992 did not show any maritime boundary existing between itself and Peru. It was only in 1992 that Chile’s cartography began to change by showing what appeared to be an international boundary out to sea. However, nothing happened in 1992 or thereafter between the Parties to change the situation justifying this shift in Chile’s official mapping. The Parties agreed no maritime boundary at that time, and they had not done so before, as Chile’s own maps consistently demonstrated.

²⁸⁵ See para. 4.136 above.

²⁸⁶ See paras. 1.32 *ff.* above.

²⁸⁷ See **Figure 5.26** in Vol. IV.

5.31 The absence of any indication of a maritime boundary on Chile's official maps over a long period of time carries with it legal consequences to the extent that Chile maintains that there is a pre-existing maritime delimitation between the Parties dating from the 1950s. As the Court of Arbitration stated in its Award in the *Beagle Channel Arbitration*:

“Equally, maps published after the conclusion of the Treaty can throw light on what the intentions of the Parties in respect of it were, and, in general, on how it should be interpreted. But the particular value of such maps lies rather in the evidence they may afford as to the view which one or the other Party took at the time, or subsequently, concerning the settlement resulting from the Treaty, and the degree to which the view now being asserted by that Party as the correct one is consistent with that which it appears formerly to have entertained.”²⁸⁸

In the same vein the Court of Arbitration in its Award in the *Beagle Channel* noted that –

“the cumulative impact of a large number of maps, relevant for the particular case, that tell the same story – especially where some of them emanate from the opposing Party, or from third countries – cannot but be considerable, either as indications of general or at least widespread repute or belief, or else as confirmatory of conclusions reached, ... independently of the maps.”²⁸⁹

5.32 In the light of these considerations, the map evidence confirms what is apparent from the text of the 1952 and 1954 instruments and from the subsequent conduct of the Parties. While the Parties did enter into provisional arrangements of a practical nature to avoid incidents involving small fishing boats, they never concluded a formal delimitation agreement. The Court's task in the present case is now to delimit the maritime zones between the Parties.

²⁸⁸ *Beagle Channel Arbitration between the Republic of Argentina and the Republic of Chile*, Report and Decision of the Court of Arbitration, 18 February 1977, reprinted in 52 ILR at p. 202, para. 137.

²⁸⁹ *Ibid.*, p. 204, para. 139.

CHAPTER VI

THE PRINCIPLES AND RULES OF INTERNATIONAL LAW GOVERNING MARITIME DELIMITATION AND THEIR APPLICATION IN THIS CASE

I. Introduction

- 6.1 In this chapter, Peru will review the principles and rules of international law relevant to maritime delimitation and their application to the geographical and other circumstances of the present case in order to achieve an equitable result. Section II starts by examining the “equitable principles/relevant circumstances” rule, also referred to as the “equidistance/special circumstances” rule. As the Court has repeatedly held, this rule constitutes the basic rule of maritime delimitation in the absence of an agreed boundary between Parties to a delimitation dispute. In Section III, Peru will then identify the relevant coasts of the Parties for delimitation purposes and the relevant area within which the “equidistance/special circumstances” rule falls to be applied. Closely related to the question of the relevant coasts and the relevant area is the question of the starting-point for the delimitation where the land boundary between the Parties meets the sea. Section IV addresses this point and shows the manner in which that point was agreed in 1929-1930.
- 6.2 Based on these factors, Section V will then turn to the construction of the provisional equidistance line which, under the Court’s jurisprudence, represents the first step in the delimitation process. In Section VI, Peru will show that there are no special or relevant circumstances characterizing the area to be delimited calling for the adjustment of that line, and that an equidistance line results in an equal division of the areas appertaining to the Parties without producing any “cut-off” effect or undue encroachment. Finally, in Section VII

Peru will demonstrate that a delimitation based on the application of the equidistance method satisfies the test of proportionality and achieves an equitable result based on the facts of the case.

II. The Principles and Rules of Maritime Delimitation

- 6.3 One constant theme on which the law of maritime delimitation has always been grounded is that delimitation is to be carried out in accordance with equitable principles in order to achieve an equitable result. This fundamental principle finds its expression not only in the jurisprudence of the Court, but also in Articles 74 and 83 of the Law of the Sea Convention.
- 6.4 As the Court pointed out in Judgment in the *North Sea Continental Shelf* cases, one of the basic legal notions which has, from the beginning, reflected the *opinio juris* in the matter of maritime delimitation is that –

“delimitation must be the object of agreement between the States concerned, and that such agreement must be arrived at in accordance with equitable principles.”²⁹⁰

As the Court went on to observe:

“On a foundation of very general precepts of justice and good faith, actual rules of law are here involved which govern the delimitation of adjacent continental shelves – that is to say, rules binding upon States for all delimitations; – in short, it is not a question of applying equity simply as a matter of abstract justice, but of applying a rule of law which itself requires the application of equitable principles”²⁹¹.

²⁹⁰ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 46, para. 85. It is appropriate to point out that the Court emphasized that “agreement” amongst States regarding delimitation must also “be arrived at in accordance with equitable principles.” *Idem*. In this respect, the Court noted that Parties are under an obligation “so to conduct themselves that the negotiations are meaningful”. *Ibid.*, p. 47, para. 85. It is apparent in this case, as explained in Chap. IV, that no such negotiations ever took place between the Parties regarding their delimitation either in 1952 or 1954, or at any time thereafter.

²⁹¹ *Ibid.*, pp. 46-47, para. 85.

6.5 The primacy of equitable principles was further elaborated by the Court in the *Tunisia-Libya* case where the Court stressed the importance of reaching an equitable result. The relevant passage from the Court's Judgment is as follows:

“The result of the application of equitable principles must be equitable. This terminology, which is generally used, is not entirely satisfactory because it employs the term equitable to characterize both the result to be achieved and the means to be applied to reach this result. It is, however, the result which is predominant; the principles are subordinate to the goal.”²⁹²

6.6 The Court has made it quite clear that a delimitation in accordance with equitable principles is to be distinguished from a decision *ex aequo et bono*, which can only be taken if the Parties agree. As the Court noted, “it is bound to apply equitable principles as part of international law.”²⁹³ Stated another way:

“Equity as a legal concept is a direct emanation of the idea of justice. The Court whose task is by definition to administer justice is bound to apply it.”²⁹⁴

6.7 This approach to maritime delimitation is aptly summarized in Articles 74 and 83 of the 1982 Convention on the Law of the Sea, each of which contains a provision to the effect that:

“The delimitation of [the exclusive economic zone or continental shelf] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.”²⁹⁵

²⁹² *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 59, para. 70.

²⁹³ *Ibid.*, p. 60, para. 71.

²⁹⁴ *Ibid.*

²⁹⁵ Article 74 (“Delimitation of the exclusive economic zones between States with opposite or adjacent coasts”) and Article 83 (“Delimitation of the continental shelf between States with opposite or adjacent coasts”) of the 1982 Convention on the Law of the Sea.

6.8 At the same time, the Court has also recognized the need for consistency and predictability with respect to issues of maritime delimitation. For example, in the *Libya-Malta* case, the Court stated the following:

“Thus the justice of which equity is an emanation, is not abstract justice but justice according to the rule of law; which is to say that its application should display consistency and a degree of predictability; even though it looks with particularity to the peculiar circumstances of an instant case, it also looks beyond it to principles of more general application.”²⁹⁶

6.9 The Court’s recent jurisprudence makes it clear that the “equidistance/special circumstances” rule accommodates the dual purpose of applying equitable principles so as to achieve an equitable result, on the one hand, and of importing a degree of consistency and predictability to maritime delimitation more generally, on the other.

6.10 Application of this rule is now well established in practice and involves essentially a two-step process: *first*, a provisional equidistance line is drawn between the relevant basepoints on the Parties’ coasts from which the breadth of their territorial sea or maritime zones is measured; *second*, consideration is then given as to whether there are any “special” or “relevant” circumstances calling for the adjustment of the provisional line in order to achieve an equitable result. In certain cases, particularly where the relevant area within which the delimitation is to take place is readily identifiable as is the case between Peru and Chile, the resulting line can then be tested against the criterion of proportionality as a final check to determine whether the line arrived in application of the two initial steps produces a result which is not unduly disproportionate.

6.11 In earlier cases involving maritime delimitation between States with opposite coasts, such as the *Libya-Malta* and *Denmark-Norway* cases, the Court

²⁹⁶ *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 39, para. 45.

proceeded on the basis that the first step in the delimitation process entailed the adoption of a provisional equidistance, or median, line followed by a second step in which the provisional line was adjusted, as necessary, to reflect the relevant circumstances characterizing the delimitation area. More recently, this approach has been extended to delimitations involving adjacent, and quasi-adjacent, coasts.

- 6.12 In the *Qatar/Bahrain* case, for example, the Court had occasion to refer back to the approach it adopted in *Libya-Malta*. As the Court indicated:

“The Court will follow the same approach in the present case. For the delimitation of the maritime zones beyond the 12-mile zone it will first provisionally draw an equidistance line and then consider whether there are circumstances which must lead to an adjustment of that line.”²⁹⁷

The Court then expanded on its reasoning in the following way:

“The Court further notes that the equidistance/special circumstances rule, which is applicable in particular to the delimitation of the territorial sea, and the equitable principles/relevant circumstances rule, as it has been developed since 1958 in case-law and State practice with regard to the delimitation of the continental shelf and the exclusive economic zone, are closely interrelated.”²⁹⁸

- 6.13 The same approach was used in the *Cameroon-Nigeria* case – a case involving delimitation between States with adjacent coasts, as is the situation between Peru and Chile. The relevant passage from the Court’s judgment explaining the methodology employed reads as follows:

“The Court has on various occasions made it clear what the applicable criteria, principles and rules of delimitation are

²⁹⁷ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment, I.C.J. Reports 2001*, p. 111, para. 230.

²⁹⁸ *Ibid.*, para. 231.

when a line covering several zones of coincident jurisdictions is to be determined. They are expressed in the so-called equitable principles/relevant circumstances method. This method, which is very similar to the equidistance/special circumstances method applicable in delimitation of the territorial sea, involves first drawing an equidistance line, then considering whether there are factors calling for the adjustment or shifting of that line in order to achieve an ‘equitable result’.²⁹⁹

- 6.14 Recent arbitral practice has followed the Court’s approach. In the *Barbados-Trinidad and Tobago* arbitration, for example, the reasoning of the Arbitral Tribunal closely mirrored the methodology that the Court articulated in *Qatar-Bahrain* and *Cameroon-Nigeria*. As the Arbitral Tribunal stated in its Award:

“The determination of the line of delimitation thus normally follows a two-step approach. First, a provisional line of equidistance is posited as a hypothesis and a practical starting point. While a convenient starting point, equidistance alone will in many circumstances not ensure an equitable result in the light of the peculiarities of each specific case. The second step accordingly requires the examination of this provisional line in the light of relevant circumstances, which are case specific, so as to determine whether it is necessary to adjust the provisional equidistance line in order to achieve an equitable result ... This approach is usually referred to as the ‘equidistance/relevant circumstances’ principle.”³⁰⁰

- 6.15 Similar support for the primary role of the “equidistance/special circumstances” rule may be found in the award in the *Guyana-Suriname* arbitration, another

²⁹⁹ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, I.C.J. Reports 2002, p. 441, para. 288. For a recent limpid exposition of the “Delimitation methodology”, see: *Case Concerning Maritime Delimitation in the Black Sea*, I.C.J. Judgment of 3 February 2009, paras. 115-122.

³⁰⁰ Award *In the Matter of an Arbitration between Barbados and the Republic of Trinidad and Tobago*, 11 April 2006, para. 242.

case involving delimitation between States with adjacent coasts. In the words of the Arbitral Tribunal:

“The case law of the International Court of Justice and arbitral jurisprudence as well as State practice are at one in holding that the delimitation process should, in appropriate cases, begin by positing a provisional equidistance line which may be adjusted in light of relevant circumstances in order to achieve an equitable solution.”³⁰¹

- 6.16 It is true that there may be situations where the coastal geography of the Parties does not permit, for practical reasons, the construction of an equidistance line as the first step in the delimitation process. The *Nicaragua-Honduras* case is one such example. There, the Court concluded that, due to the unstable nature of the basepoints from which an equidistance line would ordinarily be drawn, application of the equidistance method was impractical. Instead, the Court employed a bisector method between the coastal fronts of the Parties. In so doing, however, the Court was careful to note that, “[a]t the same time equidistance remains the general rule.”³⁰² The Court also observed that the bisector method can be used in appropriate situations to give legal effect to the criterion that “one should aim at an equal division of areas where the maritime projections of the coasts of the States ... converge and overlap.”³⁰³
- 6.17 While there are no special circumstances in the present case that render it impractical to employ the equidistance method as the first step in the delimitation exercise, as there were in the *Nicaragua-Honduras*, it is nonetheless worth noting that application of the bisector method between the relevant coastal fronts of Peru and Chile would produce virtually the same result as the equidistance method, as will be seen in Section V below.

³⁰¹ Award *In the Matter of an Arbitration between Guyana and Suriname*, 17 September 2007, para. 342.

³⁰² *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, I.C.J. Judgment of 8 October 2007, p. 77, para. 281.

³⁰³ *Ibid.*, p. 78, para. 287, quoting *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment*, I.C.J. Reports 1984, p. 327, para. 195.

- 6.18 In the light of these precedents, it is now well established that the first step in the delimitation process is to construct a provisional equidistance line between the relevant basepoints on the Parties' coasts, and that the second step then involves assessing whether there are any geographical or other relevant circumstances justifying an adjustment of the provisional line in order to achieve an equitable result. This is the approach that Peru has adopted in the present case in conformity with the principles and rules of international law.

III. The Relevant Coasts of the Parties and the Relevant Area

- 6.19 Having set out the principles and rules of law applicable to the maritime delimitation between Peru and Chile, it is appropriate to examine the geographical setting within which these rules fall to be applied. This involves an analysis of two related concepts: (a) the relevant coasts of the Parties for delimitation purposes and (b) the relevant area.

A. THE RELEVANT COASTS

- 6.20 It is evident that it is not the entire coast of each of the Parties that is relevant to delimitation, but only those portions of the coast which, because of their relationship of adjacency, generate overlapping legal entitlements to maritime zones. In other words, the delimitation to be effected in the present case is between the legal entitlements generated by the coasts of Parties which, by virtue of being adjacent to each other, meet and overlap. As the Court observed in the *Tunisia-Libya* case, another case involving delimitation between adjacent States with a common land boundary:

“Nevertheless, for the purpose of shelf delimitation between the Parties, it is not the whole of the coast of each Party which can be taken into account; the submarine extension of any part of the coast of one Party which, because of its geographic situation, cannot overlap with the extension of

the coast of the other, is to be excluded from further consideration by the Court.”³⁰⁴

- 6.21 Because of their relationship of adjacency, the relevant coasts of the Parties for delimitation purposes are initially defined by an aspect of political geography – namely, the starting-point on the land boundary between the two States. As has been noted in Chapter II, and will be discussed in more detail in Section IV below, the starting-point on the land boundary where it meets the sea is located at Point Concordia, the co-ordinates of which are 18°21'08" S, 70°22'39" W WGS84.
- 6.22 **Figure 6.1** shows that the starting-point on the land boundary between Peru and Chile lies almost exactly at the point where the configuration of the Pacific coast of South America as a whole changes direction. The Peruvian coast north of the land boundary runs in a southeast-northwest direction, while the configuration of the Chilean coast south of the land boundary is almost due north-south.
- 6.23 Offshore, there is only a narrow band of sea-bed having depths of 200 metres or less. Thereafter, as noted in Chapter II, the ocean floor plunges rapidly due to the existence of a plate boundary that runs along the west coast of South America. This can be seen from the bathymetric contours on **Figure 6.1**.
- 6.24 As for the coasts themselves, while there are some gentle undulations along both Parties’ coastal fronts, there are no significant promontories, islands or low-tide elevations in the vicinity of the land boundary or within 200 nautical miles of it on either side.
- 6.25 As can be seen on **Figure 6.1**, the Peruvian coast extends from Point Concordia in a northwest direction corresponding more or less to a straight coastal

³⁰⁴ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 75.

front as far as the city of Ilo. At this point, there is a slight concavity in Peru's coast north of Ilo, but the coast then reassumes its southeast to northwest direction up to Punta Pescadores, which lies between the towns of Ocoña and Atico. The latter is situated close to the 74° W meridian just over 200 nautical miles from the starting-point on the land boundary.

- 6.26 On the Chilean side, Chile's coast extends for a very short distance south of Point Concordia (less than 10 miles) in a northwest-southeast direction down to the coastal city of Arica. At that point, the coast of Chile adopts an almost due north-south configuration to Tocopilla, which lies just south of the 22° S parallel of latitude, and beyond.
- 6.27 As a glance at the map reveals, the coastal geography in this area is unremarkable and presents no distorting characteristics. It follows that there are no geographical features that distinctly stand out as limiting the extent of the relevant coasts of the Parties as there were, for example, in the *Tunisia/Libya* case where Ras Kaboudia on the Tunisian coast and Ras Tajoura on the Libyan coast represented the clear limits of the Parties' relevant coasts.

In its recent Judgment of 3 February 2009, the Court recalled that –

“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. Consequently ‘the submarine extension of any part of the coast of one Party which, because of its geographic situation, cannot overlap with the extension of the coast of the other, is to be excluded from further consideration by the Court’ (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, *I.C.J. Reports 1982*, p. 61, para. 75).”³⁰⁵

³⁰⁵ *Case Concerning Maritime Delimitation in the Black Sea, I.C.J. Judgment of 3 February 2009*, para. 99.

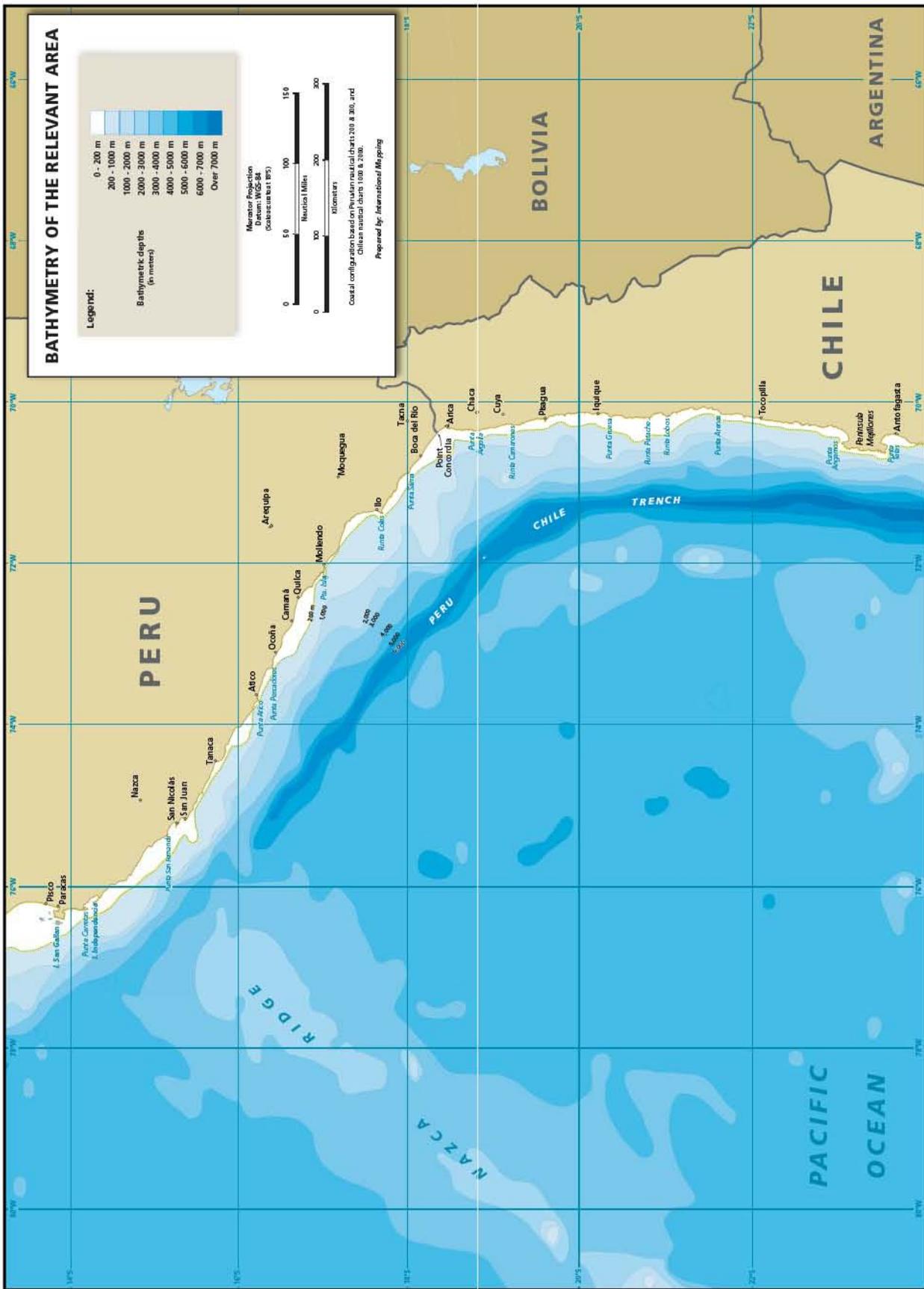


Figure 6.1

6.28 In these circumstances, it is logical to identify the relevant coasts of the Parties that give rise to overlapping maritime entitlements by reference to their distance from Point Concordia – the starting-point on the land boundary. **Figure 6.2** indicates the segments of each Party’s coast that lie within 200 nautical miles of the land boundary starting-point. On the Peruvian side, the relevant coast extends up to a point on the coast mentioned above called Punta Pescadores, which lies a short distance to the southeast of Atico. On the Chilean side, the relevant coast may be viewed as extending down to Punta Arenas, which is virtually the same distance south of the land boundary that Punta Pescadores is to the northwest. It is these stretches of coast which, because of their adjacent relationship, generate maritime entitlements which meet and overlap and thus give rise to the need for delimitation. For practical purposes, they may be considered to constitute the relevant coasts in this case.

B. THE RELEVANT AREA

6.29 Taking the relevant coasts of the Parties as described above, it is possible to identify the area within which the delimitation is to take place by reference to the entitlements generated by those coasts. As the Court observed in its recent Judgment in the *Black Sea* case – “the legal concept of the ‘relevant area’ has to be taken into account as part of the methodology of maritime delimitation”³⁰⁶. **Figure 6.3** depicts 200-mile arcs drawn from the initial point of the land boundary which define the seaward extent of each Party’s potential maritime entitlements in this area.

6.30 In addition to the starting-point on the land boundary, the two other points that circumscribe the limits of each Party’s entitlements are, *first*, the minor projection on Peru’s coast at Punta Pescadores which is some 200 nautical miles from the land boundary, and *second*, the point on Chile’s coast located at Punta Arenas which is also about 200 miles from the land boundary starting-point.

³⁰⁶ *Case Concerning Maritime Delimitation in the Black Sea, I.C.J. Judgment of 3 February 2009*, para. 110.

6.31 The resulting area of overlapping legal entitlements is depicted on **Figure 6.3**. It is within this area that the delimitation falls to be effected and with respect to which the Parties' claims may be assessed by reference to the test of proportionality³⁰⁷. The relevant area is thus circumscribed by 200-mile arcs extending from the point where the land boundary meets the sea and encompassing equivalent stretches of coast appertaining to the Parties on each side of the land boundary. As will be seen in subsequent Sections of this chapter, in the geographical circumstances of the case, delimitation of the overlapping maritime zones of the Parties on the basis of the equidistance method produces an equal division of the area, and an equitable result, due to the straightforward nature of the coastal geography.

IV. The Starting-Point for the Delimitation

6.32 At this stage, it is necessary to consider the land boundary between the two Parties because that determines the location of the starting-point of the maritime boundaries between them. As pointed out in Chapter II, within the relevant area, both Parties' baselines are "normal" baselines constituted by the low-water mark on the coast. It follows that the starting-point of the land boundary where it meets the sea is situated at the low-water mark³⁰⁸.

6.33 As has been noted³⁰⁹, Peru and Chile did not share a land boundary when they achieved independence. As a result of the war declared in 1879 by Chile against Bolivia and Peru – the War of the Pacific – land boundaries changed dramatically. Bolivia lost its rich province of Antofagasta and consequently its presence on the Pacific coast, and in the Treaty of Ancón (1883), Peru ceded to Chile its large province of Tarapacá and agreed that Chile would occupy the southern provinces of Tacna and Arica for 10 years, after which a plebiscite would be held to determine their future. The plebiscite was never held.

³⁰⁷ The application of the test of proportionality to the Parties' claims is discussed in Section VII of this chapter, below.

³⁰⁸ See paras. 2.14, 2.21 above. Moreover, as noted in paras. 4.15, 4.16, 4.19 above, it was the historical practice of the Parties to measure the outer limit of their maritime zones by reference to the low-water mark.

³⁰⁹ Para. 1.4 above. See also **Figure 1.2**.

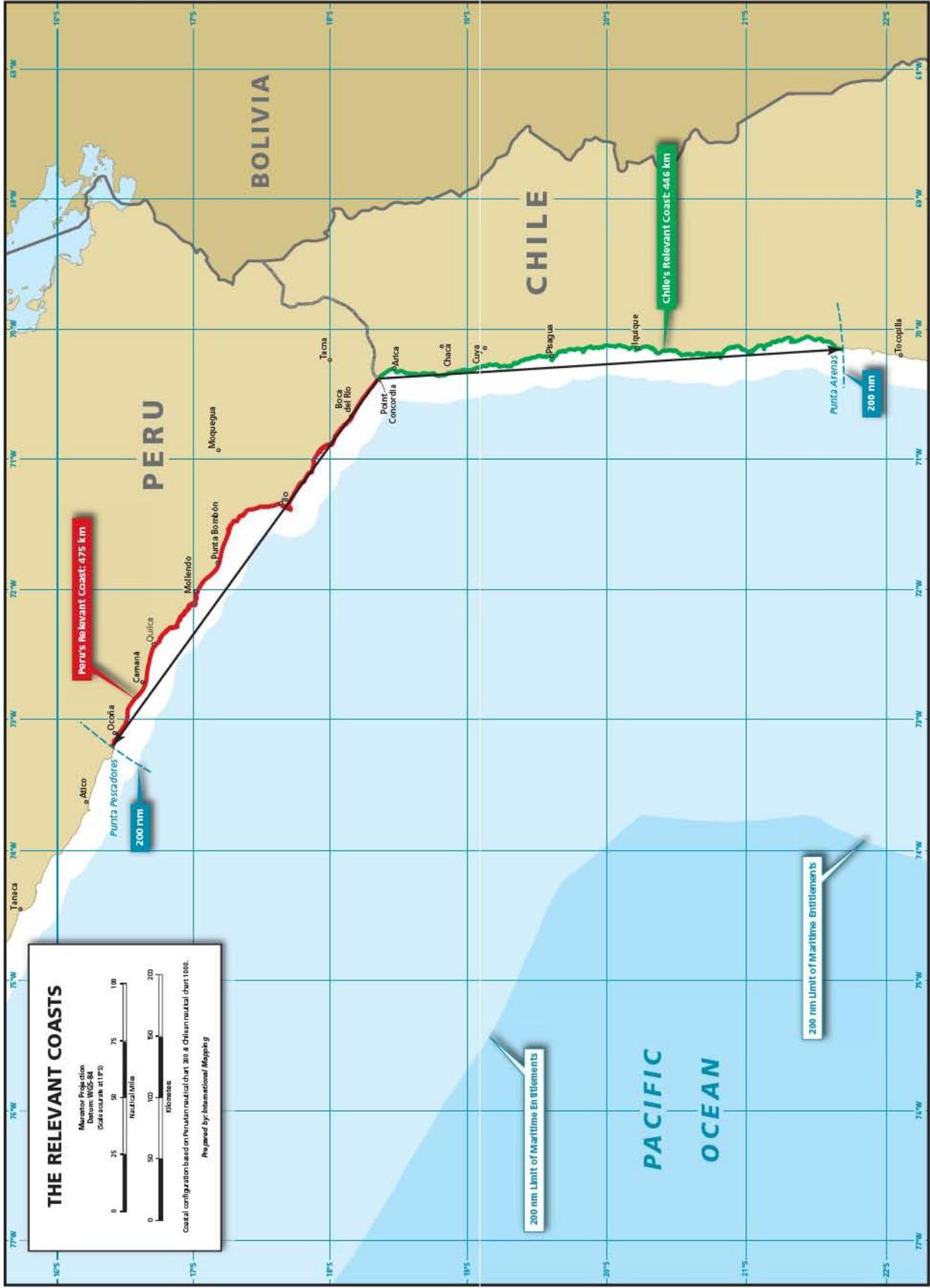


Figure 6.2

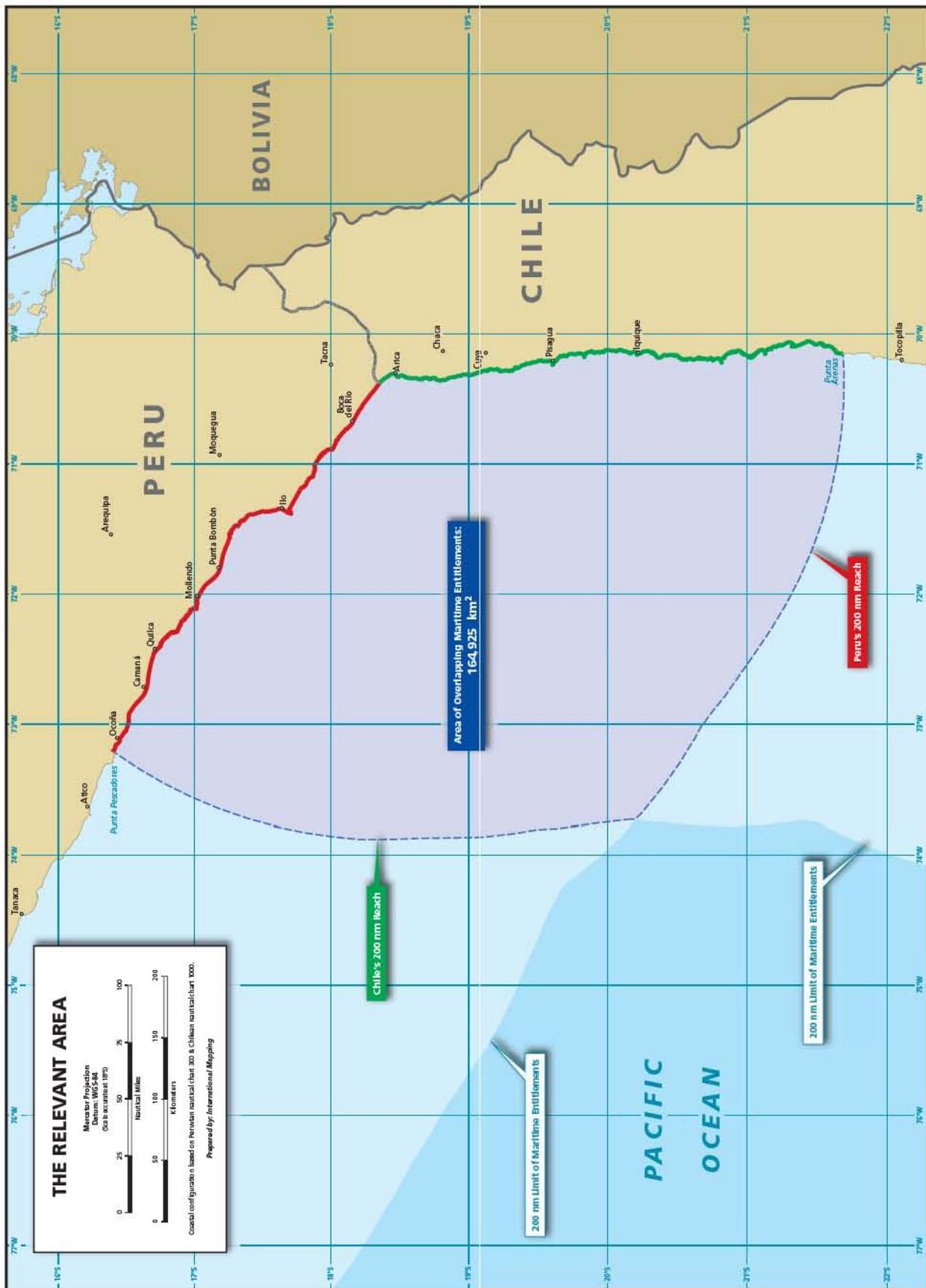


Figure 6.3

- 6.34 Chile and Peru subsequently reached agreement on territorial questions concerning Tacna and Arica, in the 1929 Treaty of Lima.
- 6.35 Under Article 2 of the 1929 Treaty of Lima³¹⁰, Tacna was given back to Peru and Arica was ceded to Chile. Article 2 reads as follows:

“The territory of Tacna and Arica shall be divided into two portions of which Tacna, shall be allotted to Peru and Arica to Chile. The dividing line between the two portions, and consequently 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. It shall continue eastwards parallel to the line of the Chilean section of the Arica La Paz railway and at a distance of ten kilometres therefrom, with such sinuosities as may be necessary to allow the local topography to be used, in the demarcation, in such a way that the sulphur mines of the Tacora and their dependencies shall remain within Chilean territory. The line shall then pass through the centre of the Laguna Blanca, so that one portion thereof shall be in Chile and the other in Peru.”

Spanish text reads as follows:

“El territorio de Tacna y Arica será dividido en dos partes, Tacna para el Perú y Arica para Chile. La línea divisoria entre dichas dos partes y, en consecuencia, la frontera entre los territorios del Perú y de Chile, partirá de un punto de la costa que se denominará ‘Concordia’, distante diez kilómetros al Norte del puente del Río Lluta, para seguir hacia el Oriente paralela a la vía de la sección chilena del Ferrocarril de Arica a La Paz y distante diez kilómetros de ella, con las inflexiones necesarias para utilizar, en la demarcación, los accidentes geográficos cercanos que permitan dejar en territorio chileno las azufreras del Tacora y sus dependencias, pasando luego por el centro de la Laguna Blanca, en forma que una de sus partes quede en el Perú y la otra en Chile.”

³¹⁰ Annex 45.

6.36 Article 3 of the Treaty of Lima then stipulated that:

“The frontier-line referred to in the first paragraph of Article 2 shall be determined and marked by means of posts in the territory itself by a Mixed Commission consisting of one member appointed by each of the signatory Governments.”

Spanish text reads as follows:

“La línea fronteriza, a que se refiere el inciso primero del artículo segundo, será fijada y señalada en el territorio con hitos, por una comisión mixta compuesta de un miembro designado por cada uno de los Gobiernos signatarios”.

6.37 There was, however, a dispute within the Commission regarding the exact location of Point Concordia, the starting-point on the coast of the land border. The dispute was solved by the Ministers of Foreign Affairs of the two countries by agreeing that Point Concordia was the intersection between the land boundary and the sea and identical instructions conveying the agreement were sent to both delegations on the ground in April 1930.

6.38 Thus, on 24 April 1930, Peru instructed its delegate as follows:

“Concordia Boundary Marker.- Starting Point, on the coast, of the borderline.-

To fix this point:

Ten kilometres shall be measured from the first bridge of the Arica-La Paz railway, over the River Lluta, running northwards, at Pampa de Escritos, and an arc with a radius of ten kilometres shall be traced westwards, its centre being the aforementioned bridge, running to intercept the seashore, so that any point of the arc measures a distance of 10 kilometres from the referred bridge of the Arica-La Paz railway line over the River Lluta. This intersection point of the traced arc with the seashore, shall be the starting-point of the dividing line between Peru and Chile.

A boundary marker shall be placed at any point of the arc, as close to the sea as allows preventing it from being destroyed by the ocean waters.”³¹¹

Spanish text reads as follows:

“Hito Concordia.- Punto Inicial, en la costa, de la línea fronteriza.-

Para fijar este punto:

Se medirán diez kilómetros desde el primer puente del ferrocarril de Arica a La Paz sobre el río Lluta, en dirección hacia el Norte, en la Pampa de Escritos, y se trazará, hacia el poniente, un arco de diez kilómetros de radio, cuyo centro estará en el indicado puente y que vaya a intersectar la orilla del mar, de modo que, cualquier punto del arco, diste 10 kilómetros del referido puente del ferrocarril de Arica a La Paz sobre el río Lluta. Este punto de intersección del arco trazado con la orilla del mar, será el inicial de la línea divisoria entre el Perú y Chile. Se colocará un hito en cualquier punto del arco, lo más próximo al mar posible, donde quede a cubierto de ser destruído por las aguas del océano.”

- 6.39 On 28 April 1930 Chile issued instructions to its delegate. The corresponding passage in the instructions is identical to that in the Peruvian instructions, except that the border is referred to as “the dividing line between Chile and Peru” instead of “the dividing line between Peru and Chile”.
- 6.40 From the point north of the first bridge of the Arica-La Paz railway, over the River Lluta, the course of the boundary as it approached the sea was agreed to be an uninterrupted arc, centred upon that bridge.
- 6.41 It will be noted that there was no question of the border approaching the coast along a parallel of latitude or, indeed, along any other straight line. The border approached the sea as an arc, tending southwards. Peru does not contend that there was an intention that the boundary should continue seawards

³¹¹ Agreement to Determine the Boundary Line and Place the Corresponding Boundary Markers at the Points in Disagreement in the Peruvian-Chilean Limits Demarcation Joint Commission of 24 April 1930 (Identical Instructions Sent to the Delegates). See Annex 87.

in an arc, generating a curved maritime boundary along the 10-kilometre arc (**Figure 6.4**). On the contrary, the sheer implausibility of any such construction demonstrates that there was no intention that the agreed land boundary should simply be extended seawards so as to produce a maritime boundary.

- 6.42 The Joint Commission of Limits duly demarcated the border. The Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers (1930)³¹², dated 21 July 1930 and agreed by the two sides, recorded that the demarcated border starts at a point on the coast located ten kilometres to the north-west of the bridge over the River Lluta. That starting-point is named “Concordia” in Article 2 of the 1929 Treaty of Lima. On the other hand, delegates agreed to name Marker No. 9, located some seven kilometres away from the coast, as “Marker Concordia”, as can be seen in the list of markers contained in the Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers (1930) (**Figure 6.5**).
- 6.43 The first marker of the physical demarcation of the boundary is Boundary Marker No. 1, made of concrete and located as near to the seashore as was possible in order to avoid being washed away by the sea, at latitude 18°21'03" S, and longitude 70°22'56" W³¹³. “Marker Concordia” which is Marker No. 9 in the list in the Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers (1930), was located at 18°18'50.5" S, 70°19'56.6" W.

³¹² Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers of 21 July 1930. Annex 54. Although the Final Act does not identify the geographical datum according to which the latitude and longitude of the boundary markers were fixed, it clearly referred to astronomical co-ordinates. Astronomical co-ordinates are obtained through terrestrial observations of the sun, planets, or stars, made by surveyors on the surface of the Earth.

³¹³ The astronomical calculation of the parallel of latitude of Boundary Marker No. 1 (18°21'03" S) is equivalent to 18°21'00" WGS84. The World Geodetic System (WGS84) is a global, geocentric reference system in that the center of the WGS84 ellipsoid, as a datum, is intended to be the Earth's center of mass. Given that astronomical co-ordinates are obtained from an individual's terrestrial observations on the Earth's surface, any inaccuracies in taking a co-ordinate reading are unique to that particular observation. Simply stated, observational errors are not necessarily uniform from place to place and therefore astronomical co-ordinates are not uniformly transferable to modern global geodetic reference systems, such as WGS84, by applying the datum transformation parameters for a particular geodetic reference system.

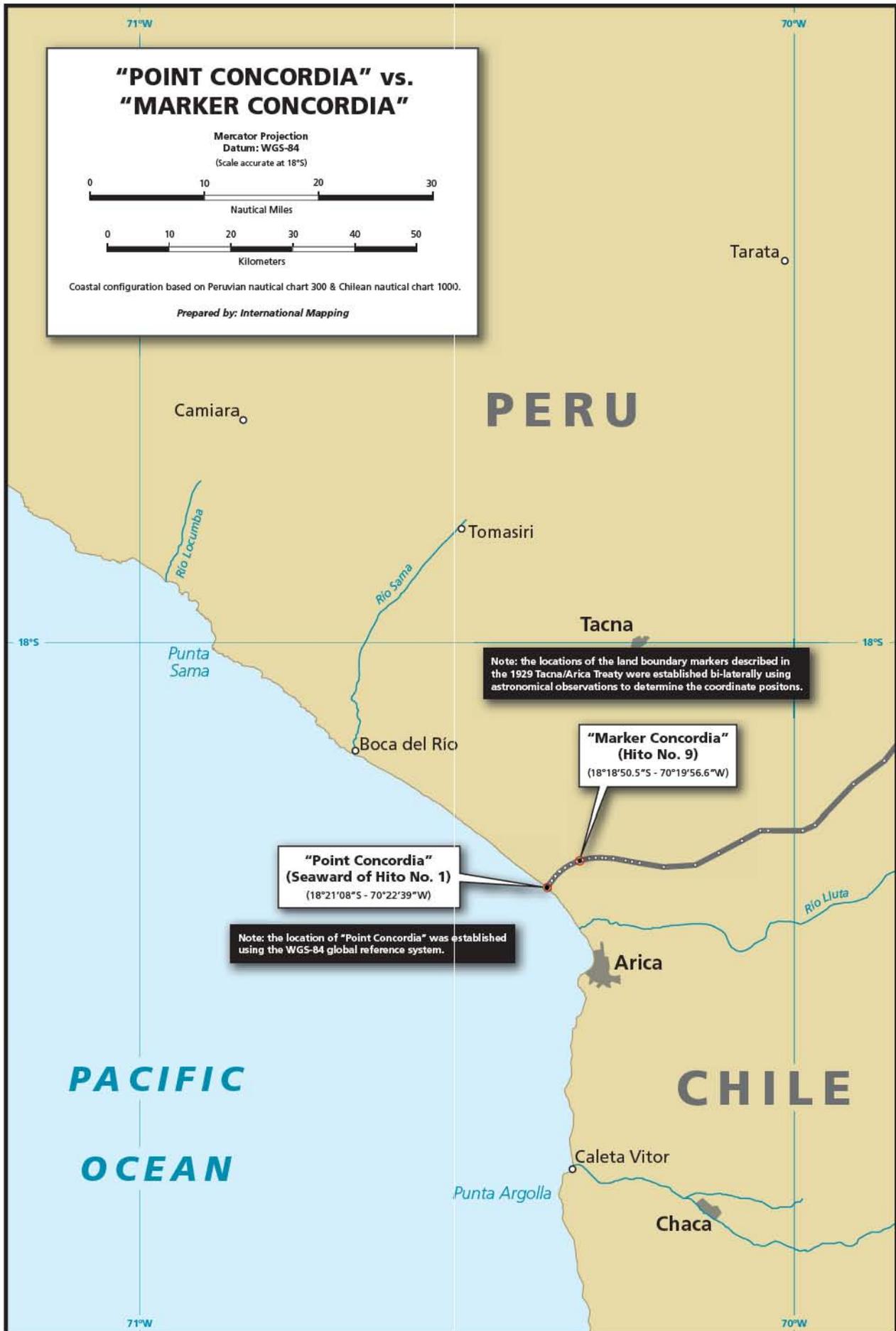


Figure 6.5

6.44 The April 1930 instructions to the Joint Commission of Limits had stipulated that:

“A boundary marker shall be placed at any point of the arc, as close to the sea as allows preventing it from being destroyed by the ocean waters.”³¹⁴

Spanish text reads as follows:

“Se colocará un hito en cualquier punto del arco, lo más próximo al mar posible, donde quede a cubierto de ser destruído por las aguas del océano.”

That is precisely what was done. Marker No. 1 was not intended to mark the start of the agreed boundary. Nor was it intended to sit on any particular parallel of latitude. It was intended to mark a point on the arc that constituted the agreed boundary, that point being chosen on the basis of convenience to ensure that the closest marker to the shoreline was not washed away by the sea.

6.45 The actual start of the boundary at the coast was described accordingly in the Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers (1930). There it was recorded that:

“The demarcated boundary line starts from the Pacific Ocean at a point on the seashore ten kilometres northwest from the first bridge over the River Lluta of the Arica-La Paz railway, and ends in the Andean mountain range at Boundary Marker V of the former dividing line between Chile and Bolivia.”³¹⁵

³¹⁴ Annex 87.

³¹⁵ Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers of 21 July 1930. See Annex 54.

Spanish text reads as follows:

“La línea de frontera demarcada parte del océano Pacífico en un punto en la orilla del mar situado a diez kilómetros hacia el noroeste del primer puente sobre el río Lluta de la vía ferrea de Arica a La Paz, y termina en la cordillera andina en el hito quinto de la antigua línea divisoria entre Chile y Bolivia.”

- 6.46 Thus, as noted in Chapter II, the point where the land boundary meets the sea, according to what was agreed between the Parties in 1929-1930 and discussed above, is known as Point Concordia, having the co-ordinates 18°21'08" S, 70°22'39" W WGS84. It is from this point that the delimitation of the maritime zones between the Parties starts – a matter which is addressed in the following Sections.

V. Construction of the Provisional Equidistance Line

- 6.47 As was noted in Section II above, the first step in the delimitation process carried out in accordance with the “equidistance/special circumstances” rule involves the establishment of a provisional equidistance line commencing from the starting-point of the land boundary. As the Court made clear in its Judgment in the *Qatar-Bahrain* case, the criteria for constructing the provisional equidistance line are expressed in the following formula, which may be regarded as reflecting customary international law:

“The equidistance line is the line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.”³¹⁶

³¹⁶ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, I.C.J. Reports 2001, p. 94, para. 177, cited with approval in *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, I.C.J. Reports 2002, p. 442, para. 290. See also the 2007 Award in *The Matter of an Arbitration between: Guyana and Suriname*, para. 352, where the Arbitral Tribunal employed the same definition of the provisional equidistance line.

6.48 These criteria are consistent with the provisions of Article 15 of the 1982 Convention on the Law of the Sea, which in turn reflects the provisions of Article 12 of the 1958 Convention on the Territorial Sea and Contiguous Zone, and from which the “equidistance/special circumstances” rule is derived. In relevant part, Article 15 provides:

“Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.”³¹⁷

6.49 Given the uncomplicated nature of the Parties’ coasts in the vicinity of the land boundary, and the fact that their baselines in this area are “normal” baselines constituted by the low-water mark along their coasts, the plotting of the equidistance line is a straightforward exercise. The basepoints that control the course of that line correspond to the nearest points on the low-water mark of the Parties’ respective coasts from which their maritime zones are measured.

6.50 **Figure 6.6** depicts the equidistance line drawn in accordance with the principles enunciated by the Court together with the control points on each Party’s coast which dictate the course of the line³¹⁸. The line starts at the initial point of the land boundary (Point Concordia) and ends at the limit of the Parties’ respective 200-mile maritime entitlements. It can be seen from the orientation of the line, and the basepoints used for its construction, that there are no distinguishing features on either Party’s coast, and no islands, which unduly influence, or distort, the course of the line.

³¹⁷ Article 15, 1982 Convention on the Law of the Sea (“Delimitation of the territorial sea between States with opposite or adjacent coasts”).

³¹⁸ In Annex 115, Peru has provided the technical basis for the equidistance line together with the co-ordinates of the turning points on the line using the WGS84 datum, as well as the line’s endpoint.

6.51 It follows that, because of the relatively smooth nature of the coasts of the Parties, the equidistance line is more or less a straight line that effects an equal division of the maritime spaces lying off the Parties' respective coasts. As noted above³¹⁹, the line produced by the application of the equidistance method is practically the same line that would be produced by use of a bisector method dividing the angle formed by the Parties' respective coastal fronts. This can be seen on **Figure 6.7**, which shows the result that would be produced by application of the bisector method. The fact that the bisector method produces virtually the same result as the equidistance method is hardly surprising given the straightforward nature of the coastal geography abutting the delimitation area.

VI. The Absence of Any Special Circumstances Calling for an Adjustment of the Equidistance Line

6.52 Turning to the second step in the delimitation process, the question arises whether there are any special or relevant circumstances which would justify the shifting of the equidistance line one way or another. The starting-point for this assessment is the geographical character of the area within which the delimitation is to take place. As the Court underlined in the *Cameroon-Nigeria* case:

“The geographical configuration of the maritime areas that the Court is called upon to delimit is a given. It is not an element open to modification by the Court but a fact on the basis of which the Court must effect the delimitation.”³²⁰

6.53 As Peru has previously explained³²¹, the geographical configuration of the Parties' coasts abutting the area to be delimited is uncomplicated. There are no geographical features that skew the course of the equidistance line.

³¹⁹ See para. 6.17 above.

³²⁰ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, *I.C.J. Reports 2002*, pp. 443, 445, para. 295.

³²¹ See, generally, Chap. II and paras. 6.20-6.28 above.

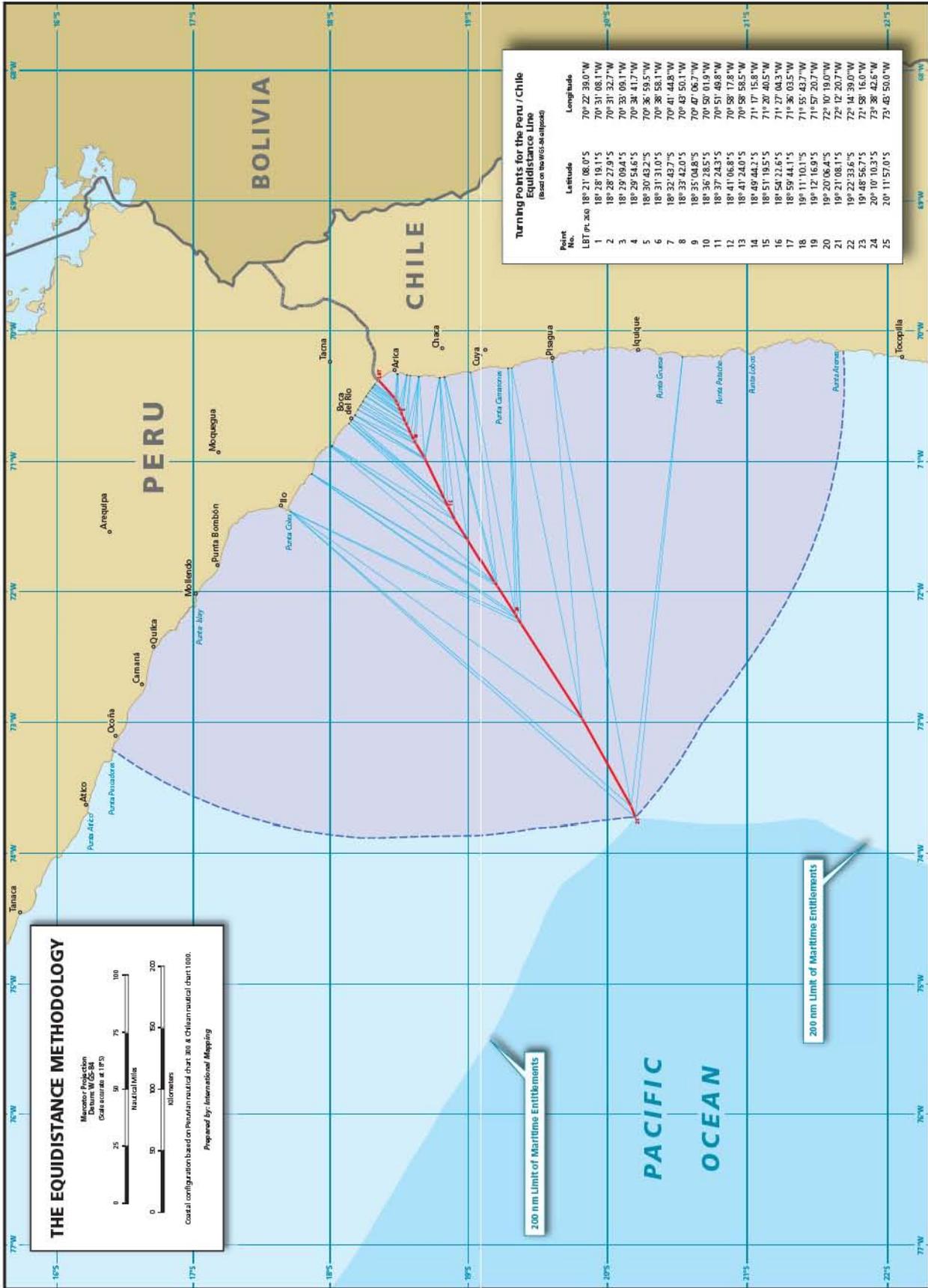


Figure 6.6

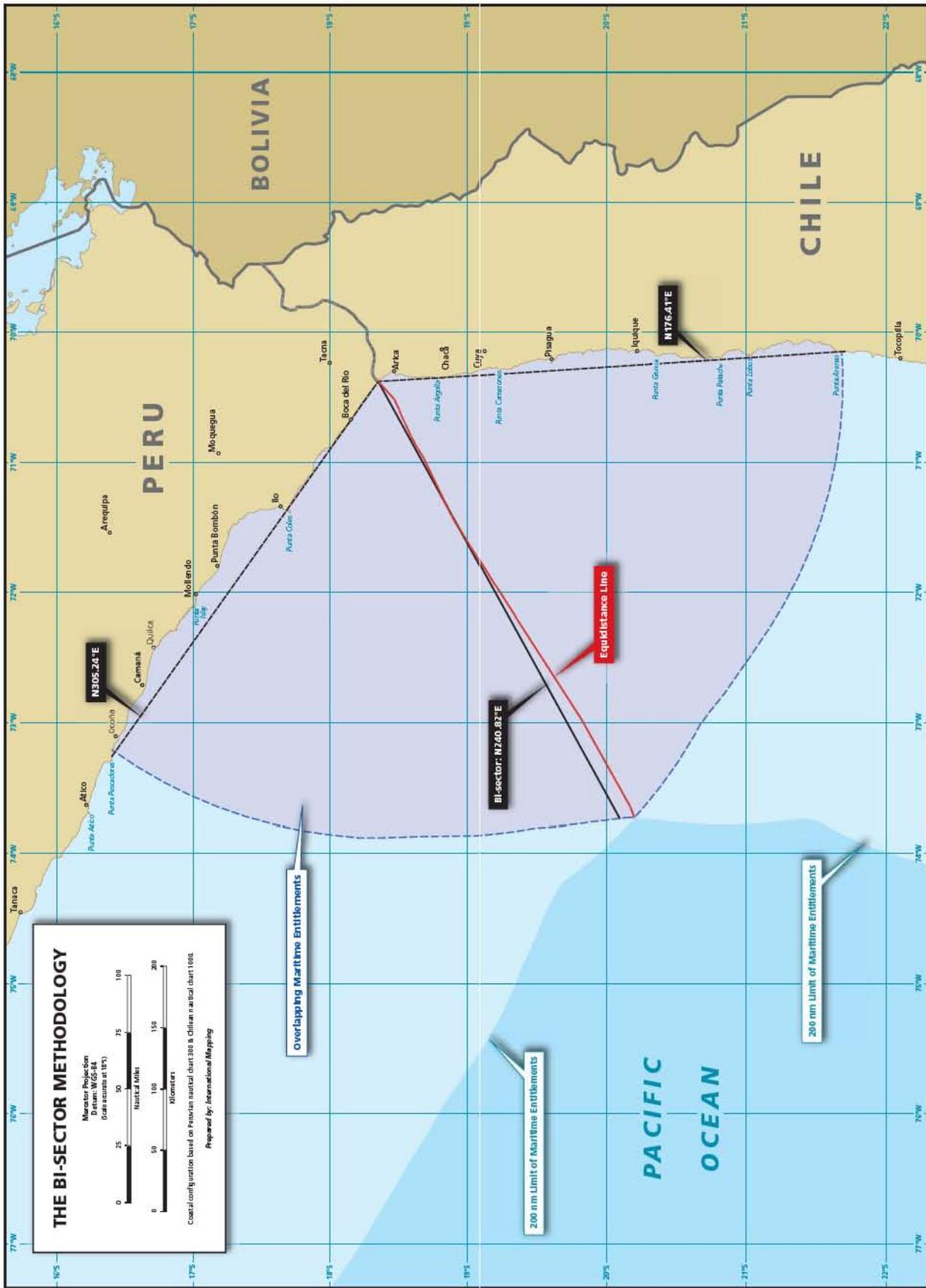


Figure 6.7

- 6.54 In addition, both Parties' coasts maintain their overall orientation and relationship to each other throughout the relevant area. Peru's coast trends in a north-west direction from the initial point on the land boundary for well over 200 miles past a point on the coast called Punta Pescadores. Chile's coast also maintains its overall north-south orientation down to, and beyond, Punta Arenas.
- 6.55 It can readily be seen that there is no disparity in the lengths of the Parties' coasts bordering the relevant area, or other distorting features, which might otherwise call for an adjustment of the equidistance line. This situation may be contrasted with more complex geographical settings such as, for example, in the *Gulf of Maine*, *Libya-Malta*, and *Denmark-Norway* cases, where the geography of the area merited an adjustment being made to the equidistance line. Here, application of the equidistance method results in an equal division of the relevant area between coasts of the Parties that are broadly equal and equivalent.
- 6.56 It was in the light of this straightforward geographical context that, on 27 August 1980 – some 29 years ago – the Head of the Peruvian delegation to UNCLOS III made a statement indicating that “the median line should as a general rule be used, as suggested in the second revision, since it was the most likely method of achieving an equitable solution”³²² which remains Peru's position to the present.
- 6.57 Further confirmation of the absence of any circumstances calling for the adjustment of the equidistance line in the present case derives from two additional considerations. *First*, the equidistance line results in an equal division of the area to be delimited. *Second*, it respects the change in direction in the Parties' coasts that occurs very near to the point where the land boundary meets the sea, and accords to the coast of each Party an equivalent projection into and under the sea. In other words, the equidistance method produces no undue “cut-off” effect or encroachment on the maritime entitlements of the Parties.

³²² Declaration of the Head of the Peruvian Delegation, Ambassador Alfonso Arias Schreiber, at UNCLOS III, 27 August 1980, para. 164. Annex 107.

6.58 The notion that, absent the existence of special circumstances, delimitation should achieve an equal division of the relevant maritime area finds support in the Judgment of the Chamber of the Court in the *Gulf of Maine* case where the Chamber put the proposition in the following way:

“To return to the immediate concerns of the Chamber, 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. Within this framework, it is inevitable that the Chamber’s basic choice should favour a criterion long held to be as equitable as it is simple, namely that in principle, while having regard to the special circumstances of the case, one should aim at an equal division of areas where the maritime projections of the coasts of the States between which delimitation is to be effected converge and overlap.”³²³

6.59 In the present case, the maritime projections of the coasts of Peru and Chile that front the area to be delimited meet and overlap throughout the area lying off the relevant coasts of the Parties on both sides of the terminal point of the land boundary out to a distance of 200 nautical miles. It is apparent, and will be graphically demonstrated in the next Section dealing with the test of proportionality, that an equidistance line produces an equal division of the relevant area of overlapping entitlements. Because there are no geographical circumstances that distort the course of the equidistance line, the equal division produced by such a line is clearly equitable.

6.60 Moreover, delimitation by means of the equidistance method also allocates to the Parties equal access to the resources of the disputed area, a further equitable criterion. The importance to Peru of being accorded equal and equitable access to the marine resources of the area has been discussed in Chapter II³²⁴.

³²³ *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 327, para. 195.

³²⁴ See paras. 2.25-2.31 above.

- 6.61 Related to the concept of the equal division of overlapping maritime entitlements is the principle of non-encroachment, otherwise referred to as the need to avoid a “cut-off” effect on the natural prolongation or projection of either Party’s coast into and under the sea.
- 6.62 By its very nature, maritime delimitation between States with opposite or adjacent coasts entails some degree of amputation, or curtailment, of the legal entitlements that a coastal State would otherwise enjoy if there was no neighbouring State bordering the same area. As explained by the Arbitration Tribunal in the *Guinea-Guinea-Bissau Maritime Delimitation* case:
- “Between two adjacent countries, whatever method of delimitation is chosen, the likelihood is that both will lose certain maritime areas which are unquestionably situated opposite and in the vicinity of their coasts. This is the cut-off effect.”³²⁵
- 6.63 Nonetheless, the Court has made it clear that the process of effectuating a delimitation between two States in accordance with equitable principles carries with it the requirement that the delimitation line should avoid cutting-off as far as possible, or encroaching unduly, on areas lying off one State’s coast to the detriment of that State.
- 6.64 The principle of non-encroachment finds expression in the Court’s Judgment in the *North Sea* cases where the Court indicated, *inter alia*, that delimitation is to be carried out in accordance with equitable principles “in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other”³²⁶.

³²⁵ *Guinea-Guinea-Bissau Maritime Delimitation*, 77 *I.L.R.* 636, at p. 681, para. 103.

³²⁶ *North Sea Continental Shelf Cases, Judgment*, *I.C.J. Reports* 1969, p. 53, para. 101(C) (1).

6.65 In the present case, application of the equidistance method does not produce any cut-off effect or encroachment on the maritime rights of either Party because of the nature of the Parties' coasts abutting the area to be delimited. It is, indeed, the very absence of any special geographical circumstances which renders the application of equidistance equitable in this case. As Professor Weil observed in his seminal work on *The Law of Maritime Delimitation - Reflections*:

“When maritime areas to which two States have title overlap, the equidistance method allows each of them to exercise sovereign rights up to a certain distance from its coasts wherever these rights come up against the equivalent rights of the other State. At the same time the principle of non-encroachment is safeguarded since, except in a few special situations which then 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.”³²⁷

6.66 In contrast, what would produce a dramatic cut-off effect, or encroachment, on Peru's maritime entitlements would be a delimitation line drawn, not equidistant from the Parties' coasts, but rather along the parallel of latitude extending from the terminal point on the land boundary. Yet this is precisely the delimitation line that Chile has previously espoused. As can be seen from **Figure 6.8**, a line drawn according to Chile's position would lie much closer to Peru's coast than to that of Chile. **Figure 6.8** shows, at various places along the coast, how a delimitation line following the parallel of latitude seaward from the initial point on the land boundary would severely and inequitably encroach on Peru's maritime entitlements. Such a line clearly contravenes the non-encroachment principle, produces a radical cut-off of the maritime rights generated by the projection of Peru's coastal front, and in no way achieves the primary goal of achieving an equitable result.

³²⁷ Weil, Prosper: *The Law of Maritime Delimitation – Reflections*. Cambridge, Grotius, 1989, p. 60.

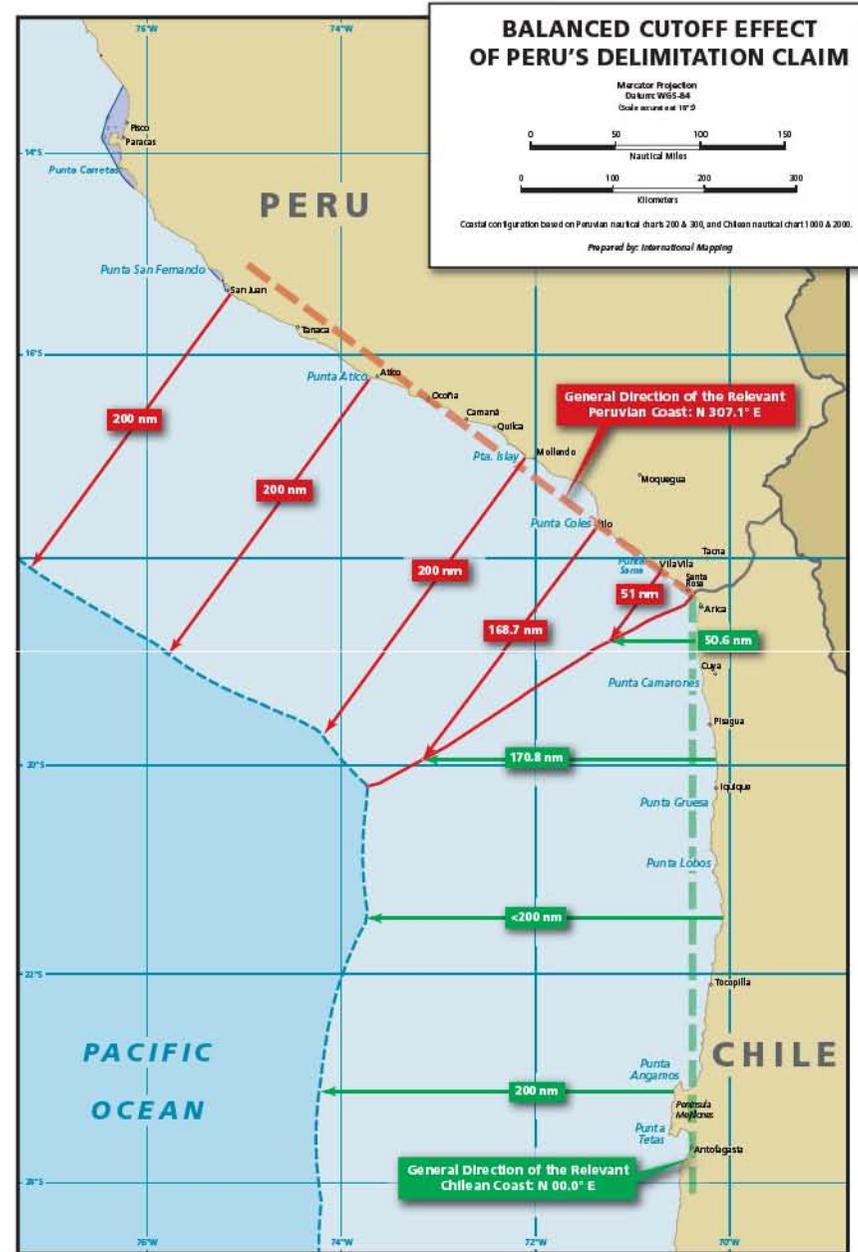
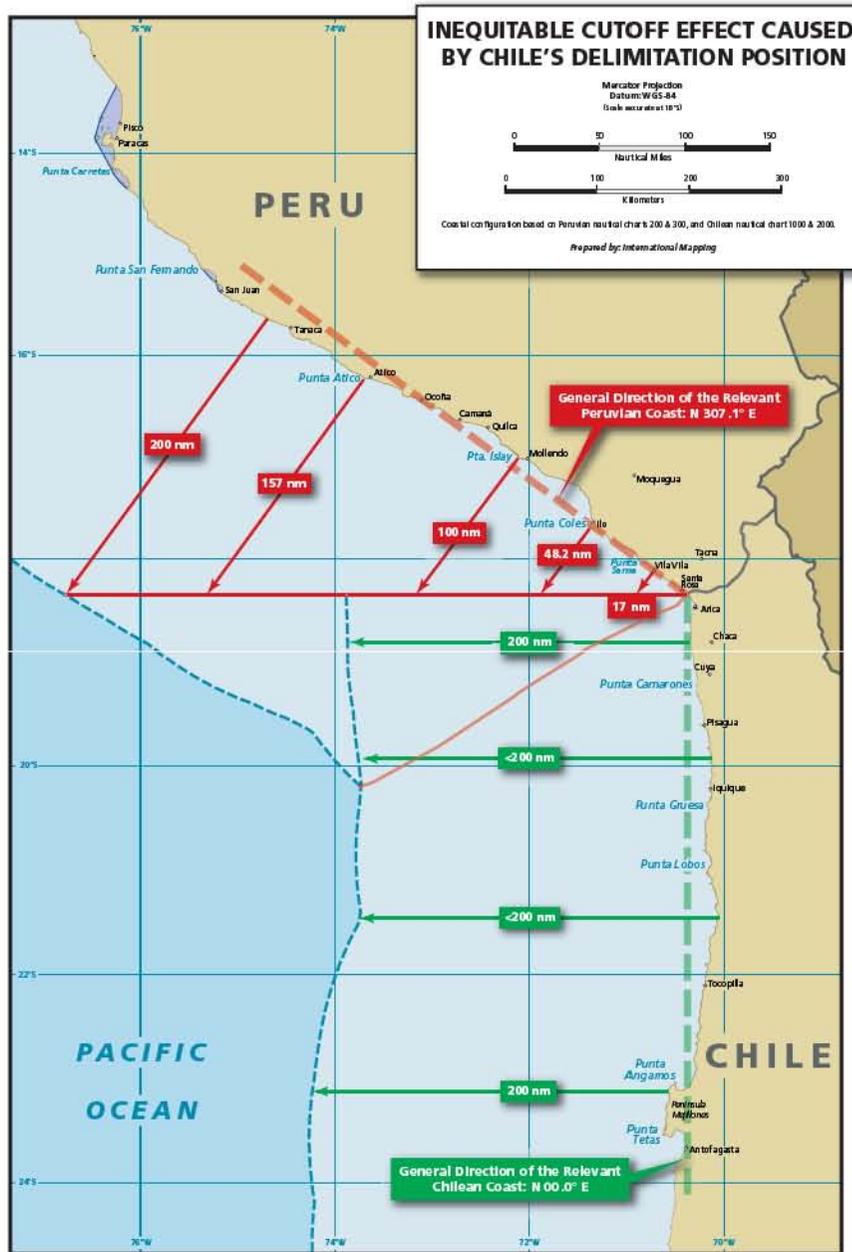


Figure 6.8

- 6.67 For example, just north of the land boundary starting-point, Peru would be limited to a projection perpendicular to its coast of just 17 miles while Chile would receive a full 200-mile projection perpendicular to its own coast. At the city of Ilo, Peru's projection would be just 48.2 miles while Chile would continue to receive a 200-mile projection off its coast in the vicinity of Pisagua. In contrast, as can be seen on **Figure 6.8**, if an equitable boundary based on the equidistance method is posited, as Peru has shown to be appropriate, each Party would enjoy maritime projections off the various points along their coasts of equivalent, and equitable, length.
- 6.68 For all of these reasons, there are no special circumstances justifying an adjustment of the provisional equidistance line. Just as in the *Cameroon-Nigeria*, *Qatar-Bahrain* and *Guyana-Suriname* cases the equidistance line in and of itself achieved an equitable result, so also does it do so here.

VII. The Equidistance Line Satisfies the Test of Proportionality

- 6.69 In this Section, Peru will apply the proportionality test to its claim – the equidistance line – and show that an equidistance boundary fully satisfies that test in accordance with the application of equitable principles. In contrast, as will also be seen, a delimitation line which would follow the parallel of latitude extending from the initial point on the land boundary would produce a wholly disproportionate, and hence inequitable, result.
- 6.70 In discussing the role of proportionality in this case, Peru is mindful of the fact that proportionality, in terms of a mathematical ratio between coastal lengths and maritime areas appertaining to those coasts, is not a method of delimitation in and of itself. As the Chamber of the Court stated in the *Gulf of Maine* case:

“The Chamber’s views on this subject may be summed up by observing that a maritime delimitation can certainly not be established by a direct division of the area in dispute proportional

to the respective lengths of the coasts belonging to the parties in the relevant area”³²⁸.

- 6.71 Rather, proportionality provides an *ex post facto* test of the equitable nature of a delimitation line arrived at by other means – namely, by application of the principles and rules of maritime delimitation to the facts of the case. To quote the relevant passage from the Court’s Judgment in the *Libya-Malta* case on the role of proportionality:

“It has been emphasized that this latter operation is to be employed solely as a verification of the equitableness of the result arrived at by other means.”³²⁹

In contrasting the role that a marked difference in coastal lengths can play as a relevant circumstance, on the one hand, and the element of proportionality as an *a posteriori* test, on the other, the Court added that –

“the test of a reasonable degree of proportionality ... is one which can be applied to check the equitableness of any line, whatever the method used to arrive at that line.”³³⁰

- 6.72 In the present case, Peru has shown in Section III above that the Parties possess equivalent coastal fronts extending on both sides of the land boundary. Regardless of how those coasts are measured, there is no disproportion between the lengths of the respective coasts of Peru and Chile that abut the area to be delimited. Coastal lengths, therefore, do not constitute a relevant circumstance calling for any adjustment to be made to the equidistance line. In addition, due to the straightforward configuration of the Parties’ coasts fronting the area to be delimited and the absence of third States in the region, the element of proportionality can readily be employed on an *ex post facto* basis to test the equitableness of the equidistance line within the relevant delimitation area.

³²⁸ *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 323, para. 185.

³²⁹ *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 49, para. 66.

³³⁰ *Ibid.*

- 6.73 **Figure 6.9** shows the results of applying the proportionality test to Peru's delimitation line constructed on the basis of the equidistance method within the relevant area. The relevant area, it will be recalled, was identified earlier in this chapter as comprising the area of overlapping maritime entitlements appertaining to the Parties within 200 nautical miles of the initial point of their land boundary.
- 6.74 It can be seen that the equidistance line results in some 84,782 square kilometres of maritime area appertaining to Peru, and some 80,143 square kilometres to Chile, or a ratio of 51.4% to 48.6%. Quite clearly, there is no disproportion at all produced by application of the equidistance method in this situation. As noted earlier, the equidistance line can also be seen to produce an equal division of the area of overlapping entitlements. The proportionality test confirms this fact, and demonstrates that the equidistance line is entirely equitable.
- 6.75 What is striking, on the other hand, is the result that would be produced by adopting the parallel of latitude advocated by Chile as the maritime boundary. **Figure 6.10** illustrates how such a line produces a radically disproportionate result: 118,467 square kilometres, or some 71.8% of the area would fall to Chile, while only 46,458 square kilometres, or 28.2% of the area, would appertain to Peru. Given the similarity of the Parties' coasts bordering the relevant area, such a result clearly fails the proportionality test and is inequitable in the extreme.

VIII. Conclusions

- 6.76 Based on the previous discussion, Peru presents the following conclusions with respect to the application of the principles and rules of maritime delimitation to the facts of the case.
- (a) The overall aim of maritime delimitation is to achieve an equitable result.

- (b) The applicable principles and rules of delimitation find their expression in the “equitable principles/relevant circumstances” rule which is similar to the “equidistance/special circumstances” rule.
- (c) The relevant coasts of the Parties and the relevant area within which the delimitation is to be effectuated are circumscribed by the coasts of each Party lying within 200 nautical miles of the initial point on the land boundary.
- (d) The starting-point for the delimitation is Point Concordia identified and established pursuant to the 1929 Treaty of Lima and the subsequent agreement of the Parties in 1930 on the Treaty’s implementation.
- (e) The provisional equidistance line is a line drawn from the nearest points on the baselines on the Parties’ coasts from which the outer limit of their maritime zones is measured. The construction of such a line in this case is a straightforward exercise.
- (f) There are no special circumstances calling for an adjustment of the provisional equidistance line which therefore represents an equitable maritime delimitation.
- (g) The equitable character of a delimitation carried out by application of the equidistance method is confirmed by the fact that the resulting line effects an equal division of the Parties’ overlapping maritime entitlements and does not result in any undue encroachment on the projections of the Parties’ respective coasts or any cut-off effect.
- (h) Application of the element of proportionality as an *ex post facto* test confirms the equitable nature of the equidistance line.
- (i) In contrast, a boundary line drawn along the parallel of latitude extending from the initial point on the land boundary does not satisfy the test of proportionality, and produces a line that cuts-off, and seriously encroaches upon, Peru’s maritime rights.

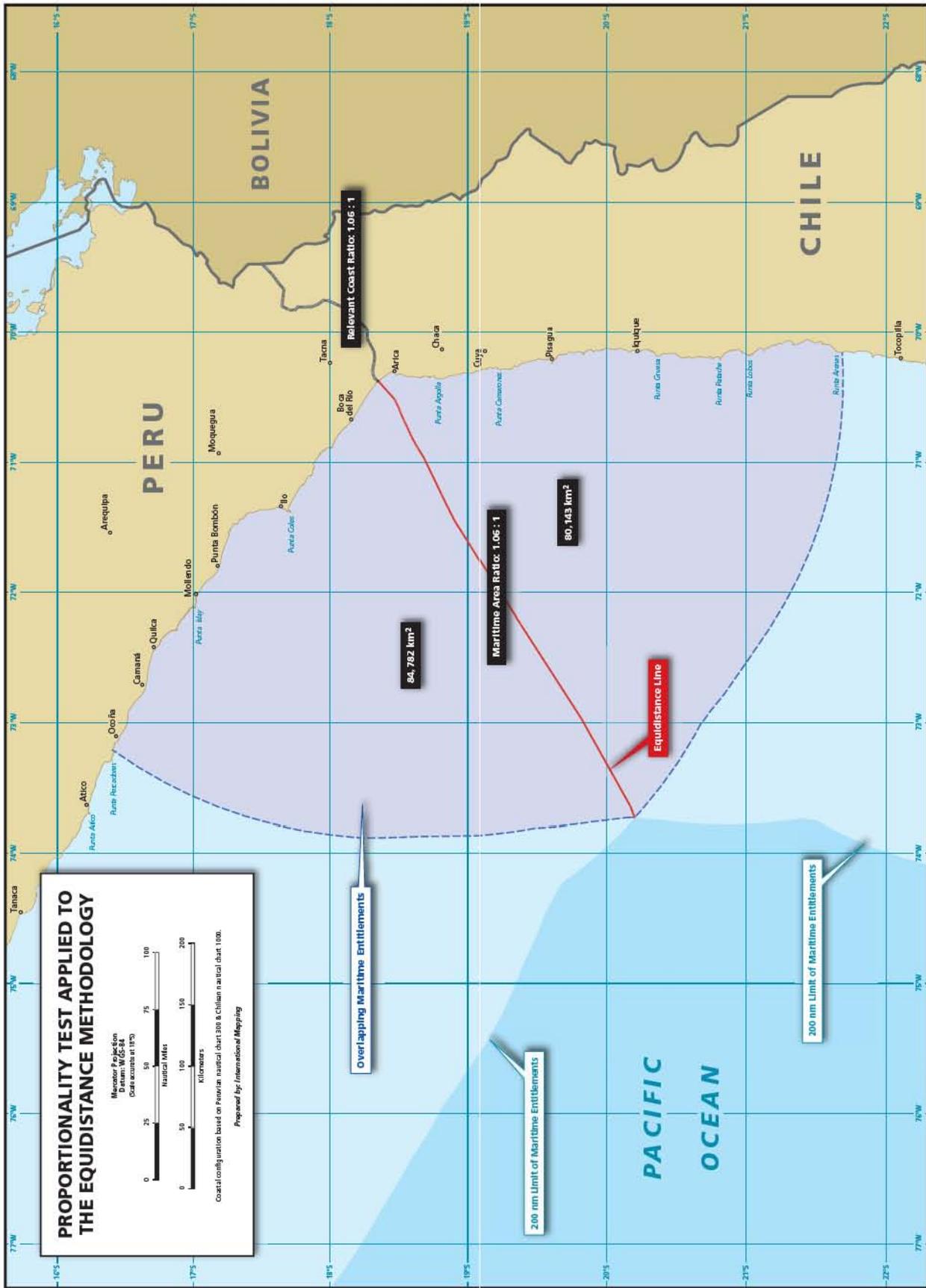


Figure 6.9

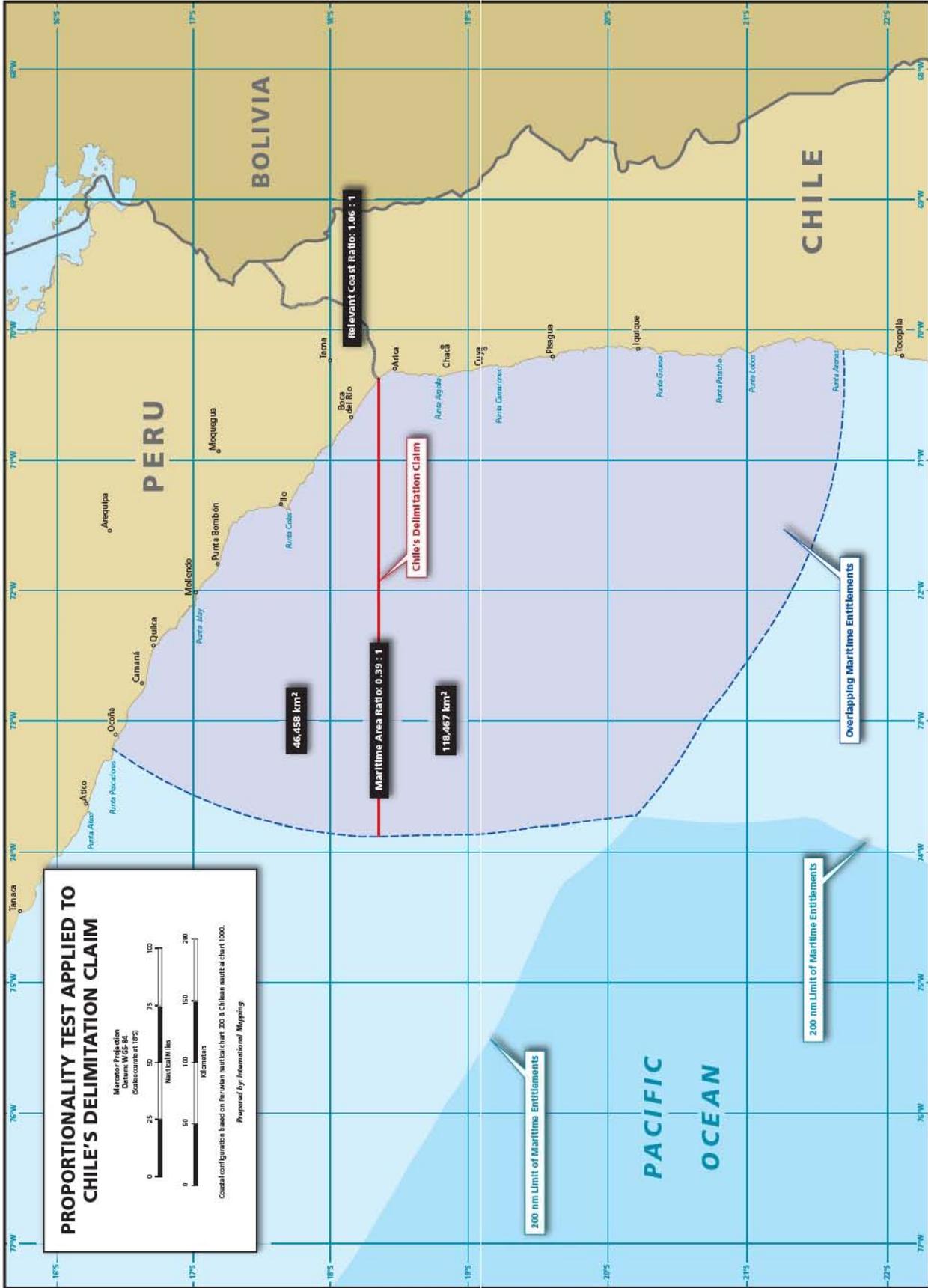


Figure 6.10

CHAPTER VII

PERU'S MARITIME ENTITLEMENTS OFF ITS SOUTHERN COAST – THE 'OUTER TRIANGLE'

I. Introduction

- 7.1 As will be apparent from Chapter III above, Peru is entitled to a maritime domain up to a distance of 200 nautical miles “from the baselines from which the breadth of the territorial sea is measured.”³³¹ Although, as a matter of principle, Chile has recognised the right of all States – and especially Peru – to claim such a jurisdictional zone³³², it nevertheless denies the rights of Peru over an area off its southern coasts and lying within 200 nautical miles of Peru’s baselines but more than 200 nautical miles from Chile’s own coasts. This denial was made with particular clarity in the Statement of the Chilean Government of 12 September 2007, by which it expressed its disagreement with the Peruvian Supreme Decree No. 047-2007-RE of 11 August 2007 approving the Chart of the Outer Limit – Southern Sector – of the Maritime Domain of Peru and with the attached map³³³ and protested against the alleged “intent” of these instruments “to attribute to Peru a maritime area, which is fully subject to the sovereignty and sovereign rights of Chile, as well as an adjacent area of the High Seas.”³³⁴

³³¹ Article 57 (“Breadth of the exclusive economic zone”), 1982 Convention on the Law of the Sea; see also Article 76, para. 1 (“Definition of the continental shelf”).

³³² See paras. 3.24-3.36 above.

³³³ See para. 3.18 and **Figure 2.4** above.

³³⁴ Statement by Chile received by the Secretariat of the United Nations on 12 September 2007. Annex 114.

- 7.2 This maritime zone over which Chile has no right whatsoever, and which entirely falls under the exclusive jurisdiction of Peru, constitutes what will be called hereinafter “the outer triangle”.
- 7.3 If one were to follow Chile’s argument as understood by Peru at this stage, the maritime border between the Parties would follow the 18°21'00" S WGS84 parallel³³⁵ up to a distance of 200 nautical miles from the coast. The line would thus stop at point X as depicted on **Figure 7.1**, where the limit claimed by Chile is represented by the red line D-X (D being the point of departure from the coast – see Chapter VI). Point X is the extreme point beyond which Chile cannot claim any sovereign rights. However, as also shown on **Figure 7.1**, point X is situated only 120.5 nautical miles from the closest point of the Peruvian baseline. As a result, independently of the general argument set out in the previous chapter of this Memorial, Peru’s rights over the area represented by the dark blue triangle X-Y-Z on **Figure 7.1** are clearly indisputable under the most basic principles of the Law of the Sea.

³³⁵ The maritime boundary claimed by Chile is a rhumb line (or a small circle) as opposed to a geodesic (or great circle). By definition, a great circle is formed by a plane that passes through the center of the Earth and a small circle is formed by any plane that passes through the Earth but does not pass through the Earth’s centre. A rhumb line is also characterized as a line of constant compass direction, whereas most geodesics are not Chile’s maritime boundary line plotted on a map (based on WGS84 datum) would have a starting-point of 18 degrees 21 minutes 00.43 seconds South latitude – 70 degrees 22 minutes 34.72 seconds West longitude and a directional bearing of North 270 degrees East. These two parameters, the starting-point claimed by Chile and the directional bearing, define a rhumb line that runs due west along the latitude of 18 degrees 21 minutes 00.43 seconds South.

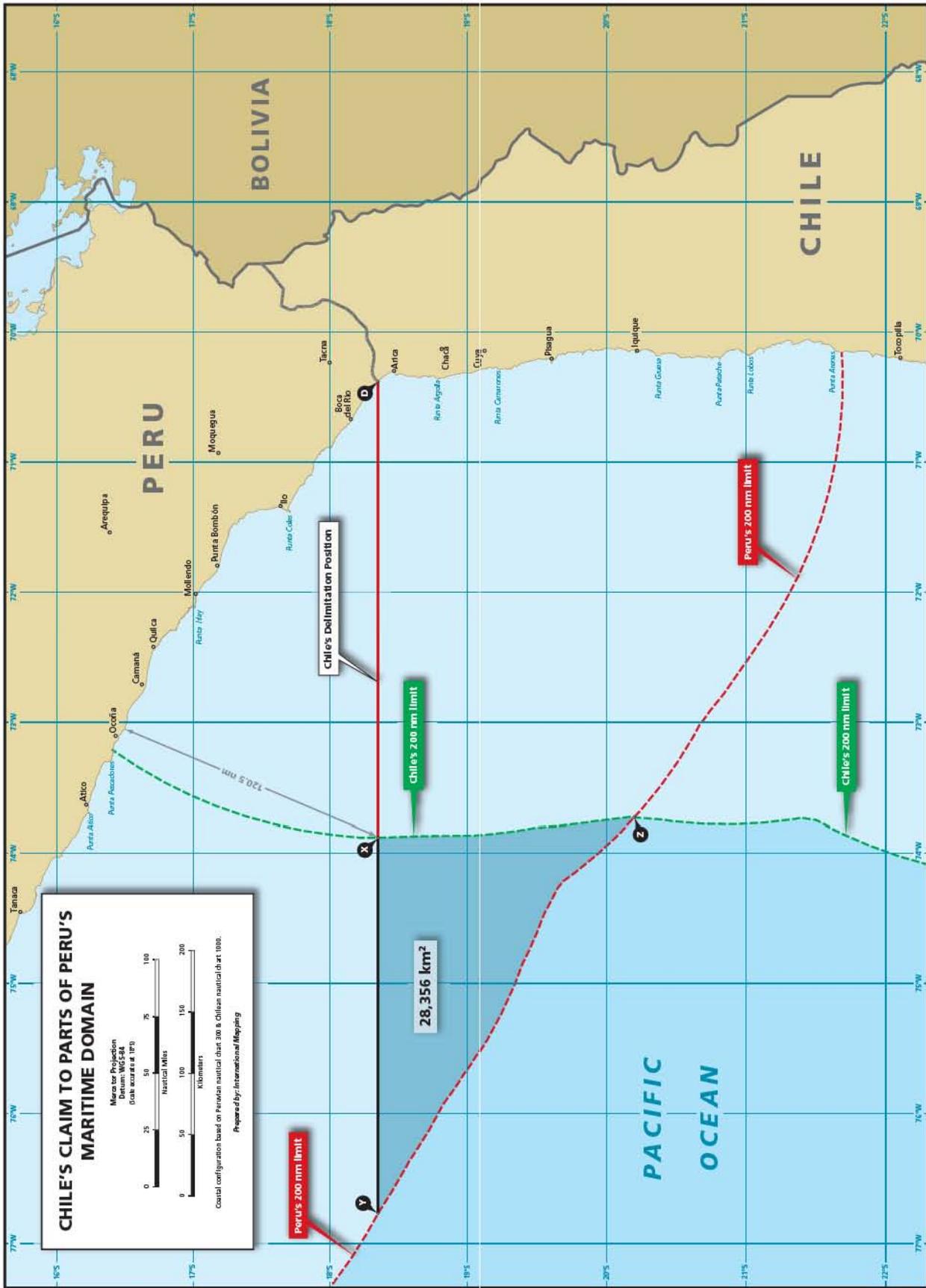


Figure 7.1

- 7.4 In effect, as has been recalled in Chapter IV above, the modern Law of the Sea grants to all coastal States a maritime domain which extends to a distance of 200 nautical miles from its coasts or, more precisely, from its baselines. This fundamental principle – in the establishment of which both Chile and Peru have played an essential role³³⁶ – is now embodied in the 1982 Convention on the Law of the Sea and, in particular, in Articles 57 and 76 (1), which must be quoted again:

“Article 57

Breadth of the exclusive economic zone

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 76

Definition of the continental shelf

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.”

- 7.5 As a consequence, in cases such as the present, where the outer edge of the continental shelf in its geomorphological sense does not extend beyond 200 nautical miles from the baselines, this distance constitutes the maximum extent of the maritime domain of the coastal States. Beyond that area lies the high seas as is unambiguously recalled by Article 86 of the 1982 Convention on the Law of the Sea:

“The provisions of this Part [VII, “High Seas”] apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.”

³³⁶ See Chap. IV, Sec. II above.

7.6 The combination of these principles leads to two main obvious conclusions:

- *First*, the Peruvian maritime domain extends up to 200 nautical miles from its baselines; and
- *Second*, for its part, the Chilean maritime domain cannot extend any further than to a distance of 200 nautical miles from Chile's own baselines.

If one looks at **Figure 7.1** it will be apparent that, quite independently of the lateral delimitation between the respective maritime domains of the Parties up to the distance of 200 miles from the Chilean coasts, there exists off Peru's Southern coast a maritime area forming a "triangle" over which Chile has no rights and over which Peru possesses exclusive and inherent sovereign rights. This is the 'outer triangle'.

7.7 However, this unambiguous situation has not prevented Chile from disputing Peru's rights over this area that Chile now describes as its "Presential Sea" ("*Mar Presencial*") and over which it itself purports to have preferential rights. As will be shown in the present chapter, such a claim is entirely incompatible with Peru's exclusive sovereign rights over the area in question.

II. The Chilean Claimed Rights in the Area

7.8 By fabricating the novel concept of "Presential Sea", Chile introduced into the already long list of maritime areas subject to specific legal regimes a new concept which, in its geographical extent as defined by Chile, is, in the present case, clearly incompatible with the exclusive sovereign rights appertaining to Peru.

7.9 This new concept seems to have appeared in the Chilean official vocabulary in the early 1990s. On 4 May 1990, Admiral Jorge Martínez Busch, Commander in Chief of the Chilean Navy, defined it as a part of the high

seas appertaining to the Chilean “oceanic territory” (*territorio oceánico*)³³⁷. According to Admiral Martínez Busch, this concept emphasizes –

“the need ‘to be present in these high seas, observing and participating in the same activities as those carried out in them by other States’ and, working within the legal status of the high seas established by the United Nations Convention on the Law of the Sea, those activities constituting for the Chilean State a means of safeguarding national interests and counteracting direct or indirect threats to its development and, therefore, to its security.”³³⁸

Spanish text reads as follows:

“la necesidad de ‘estar en esta alta mar, observando y participando en las mismas actividades que en ella desarrollan otros Estados’ y que, actuando dentro del estatus jurídico de la alta mar establecido por la Convención sobre el Derecho del Mar de las Naciones Unidas, constituyan para el Estado de Chile una forma de cautelar los intereses nacionales y de contrarrestar amenazas directas o indirectas a su desarrollo y, por lo tanto, a su seguridad.”

7.10 Although in 1992 the Chilean Minister of Foreign Affairs presented the concept of the Presential Sea as an “academic thesis”³³⁹, that concept had already

³³⁷ Martínez Busch, Jorge: “Ocupación efectiva de nuestro mar, la gran tarea de esta generación”. (*Revista de Marina* No. 3, 1990, p. 242).

³³⁸ *Ibid.*

³³⁹ “Discurso del señor Ministro de Relaciones Exteriores de Chile, don Enrique Silva Cimma, con motivo de celebrarse cuarenta años de la Declaración de Santiago, sobre zona marítima de las 200 millas marinas”. Typed document, Santiago, 18 August 1992, p. 15, quoted by Agüero Colunga, Marisol, *op. cit.*, p. 328. For the literature on the “Presential Sea”, see *e.g.*: Joyner C. and de Cola P.: “Chile’s Presential Sea Proposal: Implications for Straddling Stocks and the International Law of Fisheries”. (*Ocean Development and International Law*, Vol. 24, 1993, pp. 99-121); Orrego Vicuña, F.: “The ‘Presential Sea’: Defining Coastal States Special Interests in High Seas Fisheries and Other Activities”. (*German Yearbook of International Law*, Vol. 35, 1993, pp. 264-292); Clingan, Thomas A., Jr.: “Mar Presencial (the Presential Sea): Déjà Vu All Over Again? – A Response to Francisco Orrego Vicuña”. (*Ocean Development and International Law*, Vol. 24, 1993, pp. 93-97); Dalton, J.G.: “The Chilean Mar Presencial: A Harmless Concept or a Dangerous Precedent?”. (*Journal of Marine and Coastal Law*, Vol. 8, No. 3, 1993, pp. 397-418).

been formally sanctioned by the Chilean Law No. 19.080 of 28 August 1991 amending the General Fishing and Aquaculture Law No. 18.892 of 22 December 1989, according to which:

“Presential Sea: Is that portion of the high seas, existing for the international community, between the limit of our continental exclusive economic zone and the meridian which, crossing through the western border of the continental shelf of Easter Island, extends from the parallel of Boundary Marker No. 1 of the international border line separating Chile and Peru, to the South Pole.”³⁴⁰

Spanish text reads as follows:

“Mar presencial: Es aquella parte de la alta mar, existente para la comunidad internacional entre el límite de nuestra zona económica exclusiva continental y el meridiano que, pasando por el borde occidental de la plataforma continental de la Isla de Pascua, se prolonga desde el paralelo del hito N° 1 de la línea fronteriza internacional que separa Chile y Perú, hasta el Polo Sur.”

Thus, the area in question is not merely a political claim made by the Chilean Navy but a statutory reality formally endorsed by the Chilean State.

7.11 In Chile’s *Defence White Book* edited in 2002, the Presential Sea is also defined as –

“the ocean space comprised between the border of our Exclusive Economic Zone and the meridian that going through the western [edge]³⁴¹ of the continental shelf of Easter Island

³⁴⁰ Law No. 19.080 of 28 August 1991, Art. 1(a). Annex 38; Decree No. 430/91 of 28 September 1991, establishing the Consolidated, Co-ordinated and Systematised Text of Law No. 18.892 of 1989 and its Amendments, General Law on Fishing and Aquaculture, Art. 2 (25) <<http://www.directemar.cl/reglamar/publica-es/tm/tm-066.pdf>> accessed 27 November 2008; see also Arts. 43, 124 or 172. In the same sense, see Supreme Decree No. 598 of 15 October 1999. Annex 41.

³⁴¹ This word is mistakenly omitted in Chile’s *Defence White Book*.

stretches out from the parallel of Boundary Marker No. 1 up to the South Pole. This concept expresses the wish of Chile to have a presence in this area of high seas for the purpose of projecting maritime interests with respect to the rest of the international community, monitoring the environment and preserving marine resources, with unrestricted adherence to International Law”³⁴².

Spanish text reads as follows:

El espacio oceánico comprendido entre el límite de nuestra Zona Económica Exclusiva y el meridiano que, pasando por el [borde] occidental de la plataforma continental de la Isla de Pascua, se prolonga desde el paralelo del hito fronterizo N° 1 hasta el Polo Sur. Este concepto expresa la voluntad de ejercer presencia en esta área de la alta mar con el propósito de proyectar intereses marítimos respecto del resto de la comunidad internacional, vigilar el medio ambiente y conservar los recursos marinos, con irrestricto apego al Derecho Internacional.

- 7.12 It may be noted that the Chilean Navy website includes a map illustrating the extent of the Presential Sea (20 million square kilometres) along with other areas. That map is reproduced as **Figure 7.2** ³⁴³.

³⁴² Libro de la Defensa Nacional de Chile 2002, Part I, Point 2.2, p. 32. Annex 111.

³⁴³ Visión Océano Política on the webpage of the Chilean Navy –<http://www.armada.cl/p4_armada_actual/site/artic/20050404/pags/20050404130814.html> accessed 10 December 2008.

7.13 The General Fishing and Aquaculture Law as amended refers to concrete activities which Chile purports to regulate and control within the “Presential Sea”. They include prohibitions, such as closed seasons and capture quotas (Article 3), prohibition of specific types of rigs (Article 5); orders and management plans, such as determination of sizes and weights (Article 4), unloading percentage (Article 3); sanctions (Article 2, paragraph 47), provisions on security (the Navy must keep a record of activities in the Presential Sea) (Article 172) and the right to collect registration fees (Article 43). And, in accordance with Article 124:

“Proceedings for violations of this Law must be brought before civil courts with jurisdiction in the districts where those violations occurred or where they first began.

Had violations occurred or begun in internal waters, the territorial sea, the exclusive economic zone or the presential sea or in the case of Article 110 h), in the high seas; civil courts of the cities of Arica, Iquique, Tocopilla, Antofagasta, Chañaral, Caldera, Coquimbo, Valparaíso, San Antonio, Pichilemu, Constitución, Talcahuano, Temuco, Valdivia, Puerto Montt, Castro, Puerto Aysén, Punta Arenas or Easter Island shall have jurisdiction over those violations.”³⁴⁴

Spanish text reads as follows:

“El conocimiento de los procesos por infracciones de la presente ley corresponderá a los jueces civiles con jurisdicción en las comunas donde ellas se hubieren cometido o donde hubiesen tenido principio de ejecución.

Si la infracción se cometiere o tuviere principio de ejecución en aguas interiores marinas, el mar territorial, en la zona económica exclusiva, o en el mar presencial o en la alta mar

³⁴⁴ Decree No. 430/91 of 28 September 1991, establishing the Consolidated, Co-ordinated and Systematised Text of Law No. 18.892 of 1989 and its Amendments, General Law on Fishing and Aquaculture, Art. 124 <<http://www.directemar.cl/reglamar/publica-es/tm/tm-066.pdf>> accessed 27 November 2008.

MARITIME AREAS THAT PERTAIN TO CHILE ACCORDING TO THE CHILEAN NAVY

Map published on the Chilean Navy web site at:
www.armada.cl/p4_armada_actual/site/artic/20050404/pags/20050404130814.html



Figure 7.2

en el caso de la letra h) del artículo 110, será competente el juez civil de las ciudades de Arica, Iquique, Tocopilla, Antofagasta, Chañaral, Caldera, Coquimbo, Valparaíso, San Antonio, Pichilemu, Constitución, Talcahuano, Temuco, Valdivia, Puerto Montt, Castro, Puerto Aysén, Punta Arenas, o el de Isla de Pascua.”

- 7.14 Chile has also extended to its “Presential Sea” the application of its Laws No. 18.302 of Nuclear Security of 16 April 1984, as modified on 1 October 2002³⁴⁵, and No. 19.300 of 1 March 1994 on the Environment³⁴⁶.
- 7.15 Although these laws assert that these practices shall be carried out without prejudice to international agreements, the fact is that the main instrument regulating the matter –the 1982 Convention on the Law of the Sea which reflects general international law on this point – does not provide for any intermediary zone between the high seas and the EEZs or continental shelves of coastal States and clearly excludes jurisdictional and sovereign regulations of this nature in the *exclusive* maritime zone of another country.

³⁴⁵ See Art. 4 of Law No. 18.302 of 16 April 1984, Law of Nuclear Security, as amended: “... for the entry or transit of nuclear substances or radioactive materials across the national territory, the exclusive economic zone, the *presential sea* and the national airspace” (emphasis added). Annex 35. (Spanish text: “... para el ingreso o tránsito por el territorio nacional, zona económica exclusiva, mar presencial y espacio aéreo nacional de sustancias nucleares o materiales radiactivos”); Art. 54: “Besides, to the effect of this law, all carriers of nuclear substances or radioactive materials that use Chile’s national airspace, territorial sea, *presential sea* and exclusive economic zone shall be considered as operators” (emphasis added). (Spanish text: “Además, será considerado como explotador, para efectos de esta ley, todo transportista de sustancias nucleares o de materiales radiactivos que utilice el espacio aéreo nacional, el mar territorial, el mar presencial y la zona económica exclusiva chilena”).

³⁴⁶ See Art. 33 of Law No. 19.300 of 1 March 1994, General Environmental Law: “The competent State agencies shall develop programmes to measure and control the environmental quality of air, water and soil so as to ensure full respect for the right to live in a pollution-free environment. These programmes shall be regionalized. Regarding the Exclusive Economic Zone and the *Presential Sea* on Chile, the antecedents on these subjects will be compiled (emphasis added).” Annex 39. (Spanish text: “Los organismos competentes del Estado desarrollarán programas de medición y control de la calidad ambiental del aire, agua y suelo para los efectos de velar por el derecho a vivir en un medio ambiente libre de contaminación. Estos programas serán regionalizados. Respecto de la Zona Económica Exclusiva y del Mar Presencial de Chile se compilarán los antecedentes sobre estas materias.”).

7.16 The Chilean legislation makes clear that Chile unilaterally claims a right to “extend its jurisdiction within a certain range beyond the EEZ to protect and conserve maritime resources, including straddling and migratory fish stocks”³⁴⁷ and to enforce its regulations in this area.

7.17 As might have been expected, the Chilean claim provoked protests from other States, notably from the European Communities, and, in particular, from Spain.

7.18 As noted by the European Commission, the Chilean claim –

“provides for a peculiar and insofar isolated interpretation of the concept of Exclusive Economic Zone as described in the LOSC.

...

While the main emphasis of *Mar Presencial* is resource conservation and managed resource exploitation, it amounts in fact largely to the exclusion of non-Chilean fishing fleets from the area. Moreover it breaks the delicate balance struck between the coastal states and the high sea fishing nations when the LOSC was adopted”³⁴⁸.

7.19 For their part, the Spanish authorities pointed out that the promulgation of these regulations was a Chilean unilateral act embedded within the expansionist context of the “*Presential Sea*” concept³⁴⁹.

³⁴⁷ European Commission, *Report to the Trade Barriers Regulation Committee*, “TBR proceedings concerning Chilean practices affecting transit of swordfish in Chilean ports”, March 1999, p. 35 <http://trade.ec.europa.eu/doclib/docs/2004/october/tradoc_112193.pdf> accessed 28 November 2008.

³⁴⁸ *Ibid.*, pp. 35, 38.

³⁴⁹ Report presented by Chile’s National Section in the First Session of the I Ordinary Assembly of the Permanent Commission for the South Pacific held in Guayaquil, Ecuador on 23-24 July 2002 <<http://www.cpps-int.org/spanish/asambleas/iasamblea/primerasesion/Controversia%20ChileUE%20por%20el%20pez%20espada.pdf>> accessed 5 December 2008.

7.20 It is not Peru's intention to offer general views as to the lawfulness of Chilean claims to a "Presential Sea" or the compatibility of this very unusual concept with the modern Law of the Sea, either customary or as embodied in the 1982 Convention on the Law of the Sea. For present purposes, suffice it to note that even though the area is prudently described as a "portion of the high seas" in several Chilean regulations, it is clear that this unilaterally defined zone encroaches upon Peru's exclusive maritime zone and is therefore clearly incompatible with Peru's sovereign rights up to a distance of 200 nautical miles from its baselines.

III. The Chilean Claim Is Incompatible with Peru's Exclusive Sovereign Rights Up to a Distance of 200 Nautical Miles Off Its Southern Coast

7.21 The definition of the geographical extent of the "Mar Presencial" claimed by Chile in these various instruments is highly revealing of Chile's intent to use this concept as a means of depriving Peru of its sovereign rights over this area.

A. CHILE'S CLAIMED "PRESENTIAL SEA" ENCROACHES UPON PERU'S MARITIME DOMAIN

7.22 As mentioned above³⁵⁰, the Chilean "Presential Sea" would be situated –

"between the limit of [Chile's] continental exclusive economic zone and the meridian which, crossing through the western border of the continental shelf of Easter Island, extends from *the parallel of Boundary Marker No. 1 of the international border line separating Chile and Peru*, to the South Pole (emphasis added)."³⁵¹

³⁵⁰ See para. 7.10 above.

³⁵¹ Law No. 19.080 of 28 August 1991. Annex 38.

Spanish text reads as follows:

“entre el límite de nuestra zona económica exclusiva continental y el meridiano que, pasando por el borde occidental de la plataforma continental de la Isla de Pascua, se prolonga desde el paralelo del hito N° 1 de la línea fronteriza internacional que separa Chile y Perú, hasta el Polo Sur”.

This description substituted the original definition of this concept, as it was presented by Admiral Jorge Martínez Busch, according to which the “Presential Sea” would lie –

“between the limit of [Chile’s] continental exclusive economic zone and the meridian which, crossing through the western border of the continental shelf of Easter Island, extends *from the parallel of Arica (marker 1)* to the South Pole.” (Emphasis added)³⁵².

Spanish text reads as follows:

“entre el límite de nuestra zona económica exclusiva continental y el meridiano que pasando por el borde occidental de la plataforma continental de la isla de Pascua se prolonga desde el paralelo de Arica (hito 1) hasta el Polo Sur.”

The nuance might seem limited; it is nevertheless significant of the will of Chile to: (a) reaffirm the existence of a limit between both countries constituted by the parallel and (b) assert its own rights beyond this erroneously allegedly agreed limit.

³⁵² Martínez Busch, Jorge, *loc. cit.*

7.23 This extension of the “Presential Sea” has been confirmed on one official map issued by the Chilean Hydrographic Office in 1992, which is reproduced as **Figure 7.3** and in the 2005 National Atlas of Chile³⁵³. As will be apparent, the area thus defined and illustrated includes a maritime area which extends beyond the limit of 200 nautical miles from the Chilean baselines, thus depriving Peru of part of its legal continental shelf and of its rights to an EEZ in an area which lies within 200 miles of Peru’s coast but more than 200 miles from the coast of any other State. If Chile’s claim were to be accepted, Peru would be deprived of its legitimate sovereign and exclusive rights in the area in question, which forms a triangle of 8,257 square nautical miles (28,356 square kilometres) particularly rich in halieutic resources.

7.24 Consequently, Peru would be doubly penalized:

(a) as a consequence of the argument of the parallel, Chile would obtain sovereign rights over the area extending up to 200 nautical miles from its coasts all along its littoral, while, for its part, Peru would be able to exercise the sovereign rights to which it is entitled, only starting 370 kilometres North of the border with Chile – that is North of the department of Arequipa; more precisely, as shown on **Figure 6.8**, it would enjoy sovereign rights extending only to 1.2 nautical miles at Santa Rosa (Tacna), 17 nautical miles at Vila Vila (Tacna), 25.4 nautical miles at Punta Sama (Tacna), 48.2 nautical miles at Punta Coles (Moquegua), 100 nautical miles at Punta Islay (Arequipa) and 120 nautical miles at Camaná (Arequipa); and,

(b) at the same time, Peru’s maritime domain would also be deprived of an area of more than 28,000 square kilometres – the outer triangle – approximately equivalent to the area of countries such as Albania or Equatorial Guinea.

³⁵³ See also **Figure 7.4** in Vol. IV.

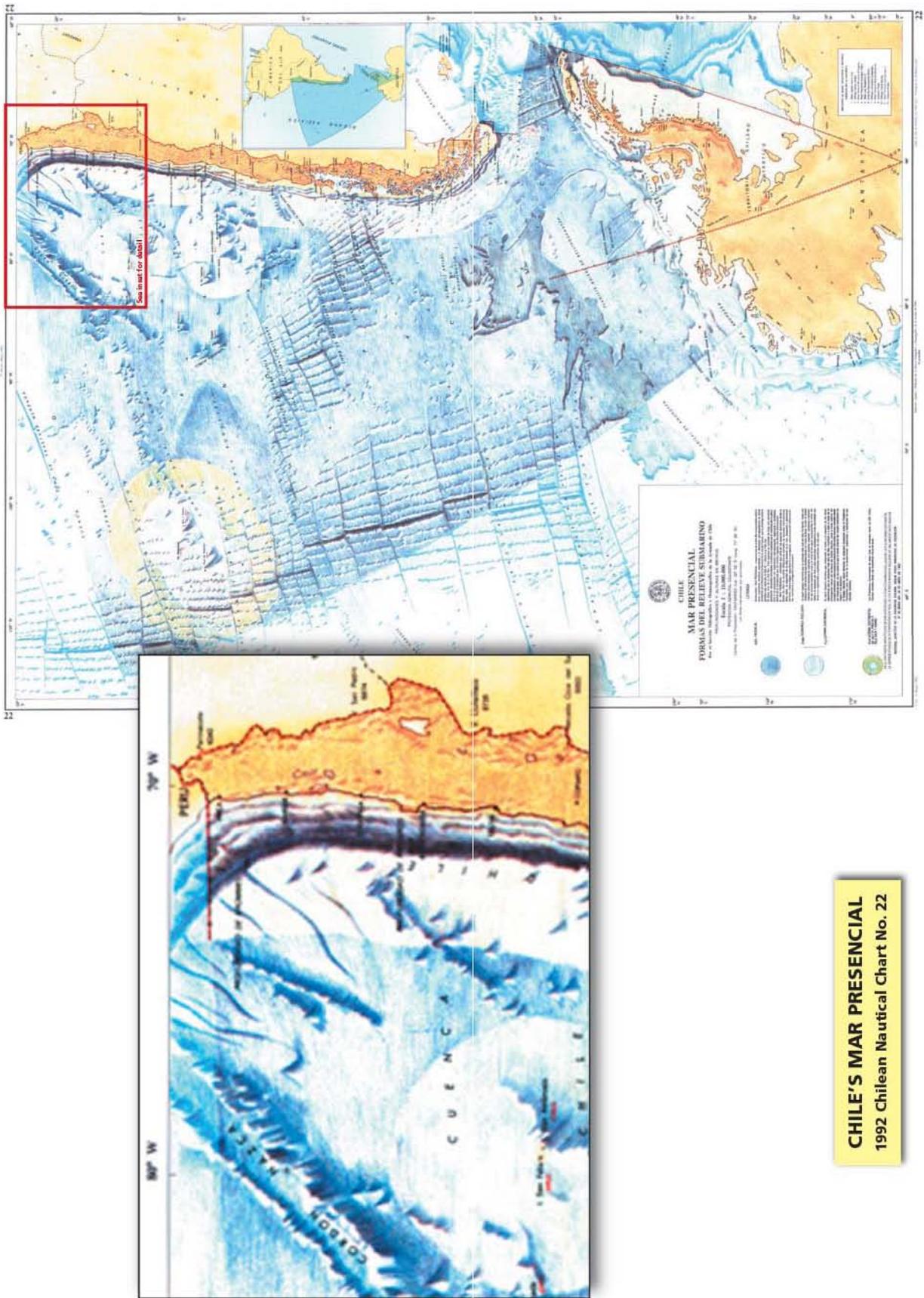
B. THE *IPSO FACTO* SOVEREIGN RIGHTS OF PERU IN THE AREA

- 7.25 As recalled in some detail in Chapter III above, a maritime zone lying less than 200 nautical miles from the coasts of the coastal State forms *ipso facto* part of the maritime domain of the latter. As a consequence, in the present case this means that the triangle X-Y-Z on **Figure 7.1**, which represents an area lying within 200 nautical miles from Peru's baselines as defined by Peru's Baselines Law³⁵⁴, is an area over which Peru is entitled to exercise its exclusive sovereign rights. Since, by virtue of the customary rule codified in Article 76 of the 1982 Convention on the Law of the Sea, a coastal State is entitled in all cases and as a minimum to a continental shelf up to a limit of 200 nautical miles from its baselines even where the outer edge of the continental margin does not extend up to that distance, the area within the triangle thus constitutes an integral part of Peru's continental shelf.
- 7.26 The legal unacceptability of Chile's apparent position is further underlined by considerations of principle relating to the very nature of the continental shelf appertaining to a State. The continental shelf is the natural prolongation of the coastal State's land territory – a notion developed by the International Court of Justice³⁵⁵ and reflected in Article 76, paragraph 1, of the 1982 Convention on the Law of the Sea. A mere glance at **Figure 2.1** shows that Peru's coastal frontage faces roughly southwest for practically all of its length, and it is a prolongation of the landmass lying behind that coast – or projection of that coast seaward – in that general southwest direction which is initially and in principle called for³⁵⁶. Chile's coastal frontage, on the other hand, runs approximately north-south and faces approximately due west, and it is a prolongation in that general direction which is called for in Chile's case.

³⁵⁴ Annex 23.

³⁵⁵ See para. 3.9 above.

³⁵⁶ See paras. 2.2.-2.4 above.



CHILE'S MAR PREENCIAL
1992 Chilean Nautical Chart No. 22

Figure 7.3

- 7.27 However, in the absence of a significant continental margin in the area relevant to this case³⁵⁷, the Chilean claim cannot extend more than 200 nautical miles from its baselines, as is clearly expressed in Article 76, paragraph 1, of the 1982 Convention on the Law of the Sea³⁵⁸ and, consequently, it can have no overlapping claim to a continental shelf beyond the line **X-Z** drawn on **Figure 7.1**³⁵⁹. And, as far as the EEZ is concerned, it follows clearly from the limpid drafting of Article 57 of the Convention, that such a zone “shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured”.
- 7.28 In other words, since the geomorphological composition of the sea-bed and subsoil in the area is such that Chile cannot claim a continental shelf including areas lying more than 200 nautical miles from its baselines under Article 76 of the 1982 Convention on the Law of the Sea, Chile cannot claim any rights competing with those of Peru over the outer triangle – let alone can it unilaterally proclaim “presential rights” infringing the exclusive rights belonging to Peru in the area.
- 7.29 Moreover, in the present case Chile can invoke no agreement given by Peru, nor any formal relinquishment of Peru’s sovereign rights, nor Peruvian acquiescence in the so-called “presential rights” claimed by Chile, which would infringe on its own sovereign and exclusive rights – such a relinquishment or acquiescence cannot, moreover, be presumed lightly³⁶⁰. On the contrary, Peru’s *ipso facto* and exclusive rights over the area are confirmed by a number of elements³⁶¹.

³⁵⁷ See para. 3.7 above. See also **Figure 7.5**.

³⁵⁸ Quoted above, para. 7.4.

³⁵⁹ See para. 7.3 above.

³⁶⁰ See: *Case Concerning Maritime Delimitation in the Black Sea, I.C.J. Judgment of 3 February 2009*, paras. 71-76.

³⁶¹ See paras. 4.140-4.143 above.

7.30 Any suggestion that Peru would have agreed to a limitation of its sovereign rights in the area that Chile includes in its “Presential Sea”, is irreconcilable with the general spirit which has inspired the Parties since they were among the main initiators of the mobilization against the traditional Law of the Sea which led to a spectacular widening of the rights of coastal States. It is inconceivable that Peru would have agreed that the outer triangle, over which it possesses exclusive sovereign rights, could be considered part of the high seas, still less an area subject to the regulation and enforcement measures of another State. To the contrary, and totally in line with the basic concern which has guided these countries since the 1950s in their maritime aspirations – namely the protection of the fishing resources and other economic resources in front of their coasts – it seems hard to imagine how such practice of creating an area of seas belonging to nobody by means of self-restraint by one of the Parties, could have served their cause.

7.31 It is important to keep in mind that the main, if not the sole, purpose of the 1952 Declaration of Santiago was to mutually recognize claims to sovereignty over maritime areas extending up to a minimum distance of 200 nautical miles from the coasts. In this instrument Chile has accepted that the Peruvian claim legitimately extended up “to a minimum distance of 200 nautical miles” from its coasts³⁶².

7.32 For its part, as shown above in this Memorial³⁶³, Peru has constantly upheld, including in its Constitution, that its exclusive sovereign rights and jurisdiction extend up to 200 nautical miles distance³⁶⁴.

³⁶² See para. II of the 1952 Declaration of Santiago. Annex 47.

³⁶³ See paras. 3.11-3.23 above.

³⁶⁴ See Article 98 of the 1979 Constitution and Article 54 of the 1993 Constitution, reproduced at paras. 3.16-3.17 above.

7.33 Peru has coherently and firmly maintained its position in its relations with Chile as well as with third States. Just to give two examples:

- In November 1954, five whaling ships belonging to the shipowner Aristotle Onassis, covered by a Lloyd's insurance policy, were arrested by Peruvian warships 126 nautical miles from the Peruvian coast. In answer to a Note of protest from the British Embassy in Lima, the Ministry of Foreign Affairs of Peru replied on 25 November by explaining that the decisions were "acts of sovereignty in relation to which [the Peruvian] Government cannot accept any reservations or complaints"³⁶⁵. Finally, following a decision by the Harbour Authority of Paita³⁶⁶, the ships were released after the payment of a fine of US\$ 3 million;
- In January 1955, a factory ship, the *Tony Bay*, and other tuna clippers also under American flag were fined for unauthorized fishing within the 200-mile zone. Here again, the Peruvian Minister of Foreign Affairs rejected a protest of the United States Government by stating, *inter alia*, that:

"The criterion of Peru for the determination of the Maritime Zone ... does not correspond to necessities of military or police nature, but to the defence of a richness useful to mankind, that is found in maritime area adjacent to its territory and incorporated to national welfare by virtue of nature."³⁶⁷

³⁶⁵ On this episode, see also above, para. 4.83 *ff.* See *e.g.*: Note (M).-6/17/41 of 25 November 1954 from the Minister of Foreign Affairs to the Ambassador of Great Britain, quoted in Ministerio de Relaciones Exteriores (1955), *op. cit.*, pp. 148-149. (Spanish text: "actos de soberanía respecto a los cuales mi Gobierno no puede aceptar ni reservas ni reclamaciones."). Annex 98.

³⁶⁶ Harbour Authority of Paita, Peru, Decision of 26 November 1954, *ibid.*, pp. 149-153. (English translation in: The *American Journal of International Law*, Vol. 49, No. 4, 1955, October, pp. 575-577).

³⁶⁷ Ministerio de Relaciones Exteriores (1955), *op. cit.*, p. 176. Annex 98. On this episode, see also García Sayán, Enrique: *Derecho del mar: las 200 millas y la posición peruana*. Lima, 1985, p. 35.

Spanish text reads as follows:

“El criterio del Perú para la determinación de la Zona Marítima ... no corresponde a necesidades de orden militar o policial, sino de defensa de una riqueza útil a la humanidad, que se encuentra en área marítima adyacente a su territorio e incorporada al patrimonio nacional por obra de la naturaleza.”

7.34 When Chile published (on 23 August 2004) Decree No. 123, dated 3 May 2004, on the “Policy for the Use of National Ports by Foreign Flag Vessels that Fish in the Adjacent High Seas”³⁶⁸, Peru sent a diplomatic note to the Chilean Ministry of Foreign Affairs, in which it made a formal reservation in relation to this Decree “in all of which it might affect Peruvian rights and interests in the maritime spaces” to which said Decree makes reference³⁶⁹. This note added that: “Peru maintains its reservations with regard to any legal act, including conventions or agreements and political acts by the Republic of Chile that affect Peruvian sovereignty, jurisdiction and interests in its maritime space.”³⁷⁰

7.35 The Peruvian position is also recorded in a Memorandum dated 9 March 2005, handed over to the Chilean Ambassador to Peru, in relation to the entry into force of the “Galapagos Agreement” of August 2000:

“The Peruvian Delegation on that occasion informed the representatives of the Government of Chile that Peru could not participate in the Galapagos Agreement because if the outer limit of Peru was not recognised, there would be a possibility for third countries to consider part of this outer limit as belonging to the high seas. Taking into account that the scope of application of the Galapagos Agreement is a high seas area adjacent to the

³⁶⁸ Annex 42.

³⁶⁹ Note No. 5-4-M/281 of 4 November 2004 from the Embassy of Peru to the Ministry of Foreign Affairs of Chile. Annex 81. (Spanish text: “en todo aquello que pueda afectar los derechos e intereses peruanos en los espacios marítimos”).

³⁷⁰ *Ibid.* (Spanish text: “Perú mantiene su reserva sobre cualquier acto jurídico, incluidos convenios o acuerdos, y actos políticos de la República de Chile, que afecten la soberanía, jurisdicción e intereses del Perú en su espacio marítimo.”).

zone of sovereignty and jurisdiction of the coastal States, it is necessary for the countries that benefit from this Agreement to have no misunderstanding whatsoever regarding the extension of the maritime spaces of sovereignty and jurisdiction of each of the coastal States and the area of application of the aforementioned agreement. We are confident that the sister Republic of Chile will accede to the Peruvian petition.”³⁷¹

Spanish text reads as follows:

“La delegación peruana manifestó, en esa oportunidad, a los representantes del Gobierno de Chile que el Perú no podría participar en el Acuerdo de Galápagos ya que si no se reconoce el límite exterior del Perú cabría la posibilidad que terceros países consideren parte de este límite exterior como alta mar. Teniendo en cuenta que el ámbito de aplicación del Acuerdo de Galápagos es un área de alta mar aledaña a la zona de soberanía y jurisdicción de los Estados ribereños, es necesario que los países que se beneficien de este acuerdo no tengan malentendido alguno sobre la extensión de los espacios marítimos de soberanía y jurisdicción de cada uno de los Estados costeros y el área de aplicación del mencionado acuerdo. Se tiene la confianza que la hermana República de Chile accederá a la petición peruana.”

- 7.36 Peru has systematically opposed any attempt to treat its outer triangle as part of the high seas during the negotiations for the creation of a regional fishing organization that would operate in the high seas. Thus, in a Note dated 29 August 2005 sent to the Chilean Minister of Foreign Affairs, the Peruvian Embassy in Chile stated:

“Facsimile No. 13 dated June 10 of the present year, sent by the Chilean National Section of the Permanent Commission for the South Pacific to the Secretary General (a.i.) of said organization, refers to the area of application of the future agreement for the administration of fisheries in the South Pacific, and points out as one of its limits parallel 18°21'03" south

³⁷¹ Memorandum of 9 March 2005, from the Ministry of Foreign Affairs of Peru to the Ambassador of Chile. Annex 82.

latitude that, as that Honourable Government knows, is related with the controversy on maritime boundary that exists between Peru and Chile.

In this sense, the Embassy of Peru reiterates its persistent position regarding the pending maritime delimitation between both countries and thus makes reservation over any act, convention or agreement that may affect Peruvian sovereignty, jurisdiction or interests in its maritime space³⁷².

Spanish text reads as follows:

“Facsímil No. 13, de 10 de junio del presente año, enviado por la Sección Nacional chilena de la Comisión Permanente del Pacífico Sur al Secretario General (e) de dicha organización, contiene una mención al área de aplicación del futuro convenio para la administración pesquera en el Pacífico Sur, y señala como uno de sus límites el paralelo 18°21'03" de latitud sur que, como conoce ese Ilustrado Gobierno, guarda relación con la controversia sobre límite marítimo que existe entre el Perú y Chile.

En ese sentido, la Embajada del Perú reitera su persistente posición sobre la delimitación marítima pendiente entre ambos países y por tanto hace reserva sobre cualquier acto, convenio o acuerdo que pueda afectar la soberanía, jurisdicción e intereses del Perú en su espacio marítimo.”

7.37 These episodes bear clear witness to the firmness of Peru’s intention not to relinquish its sovereign rights in the area.

7.38 In view of this consistent pattern of conduct, it is impossible to allege that Peru has either by agreement or by its conduct abandoned its *ipso facto* exclusive rights on the area extending beyond 200 nautical miles from the Chilean baselines but within the distance of 200 nautical miles from the Peruvian baselines which clearly falls in the exclusive jurisdiction of Peru.

³⁷² Note 5-4-M/276 of 29 August 2005, from the Embassy of Peru to the Ministry of Foreign Affairs of Chile. Annex 83.

CHAPTER VIII

SUMMARY

In accordance with Practice Direction II, Peru presents the following summary of its reasoning.

- 8.1 This case concerns *(a)* the delimitation of the maritime areas between Peru and Chile and *(b)* Peru's right to maritime areas lying within 200 nautical miles of its coast but further than 200 nautical miles from Chile's coast – the outer triangle.
- 8.2 The jurisdiction of the Court is based on Article XXXI of the Pact of Bogotá to which both Peru and Chile are Parties.
- 8.3 There is no pre-existing agreement between the Parties effectuating a maritime delimitation between them. Neither the 1952 Declaration of Santiago, nor the 1954 Agreement on a Special Zone purported to effectuate a maritime delimitation between Peru and Chile. The Parties to this case engaged in no negotiations at the time regarding their maritime boundary; the instruments in question were not delimitation agreements; and no course of a delimitation line with specific co-ordinates, a technical datum, a defined endpoint, or an illustrative map was ever discussed or agreed by the Parties at that time.
- 8.4 The primary purpose of the 1952 Declaration of Santiago was to establish, on a provisional basis between Peru, Chile and Ecuador, and as a common maritime policy, a minimum 200-nautical-mile outer limit to their exclusive maritime jurisdiction in order to conserve and safeguard the marine resources lying within those limits from fishing by other States or their private entities.

- 8.5 The purpose of the 1954 Agreement on a Special Zone was to reduce friction between fishermen on small boats and thereby to avoid unnecessary tension between the States Parties while they were focused on defending their claims towards third countries in an exercise of regional solidarity. The 1954 Agreement on a Special Zone did not modify or derogate from the 1952 Declaration of Santiago.
- 8.6 In 1968-1969, Peru and Chile arranged for the construction of two light beacons in the vicinity of the starting-point of their land boundary. This exercise related to provisional arrangements regarding local fishermen and was designed as a bilateral measure of a pragmatic nature to enable small vessels operating close to the coast to avoid becoming entangled in fishing incidents.
- 8.7 From 1986 onwards, following the conclusion of the 1982 Convention on the Law of the Sea, Peru sought to initiate discussions with Chile for the delimitation of a maritime boundary between the two States. These initiatives did not bear fruit: Chile refused to engage in any negotiations.
- 8.8 Throughout the period from 1952 to 1992, the Parties issued no official maps indicating that any maritime boundary existed between them. It was only in 1992, some 40 years after the signature of the 1952 Declaration of Santiago, that Chile unilaterally, and in a self-serving fashion, began to amend its cartography to show a “maritime boundary” with Peru along the parallel of latitude extending from the initial point on the land boundary. This was first done in connection with Chile’s articulation of a claim to the “Presential Sea”. In contrast, when Chile delimited its maritime boundary with Argentina in 1984, the Parties to that agreement agreed a list of geographical co-ordinates and a map which depicted that boundary.
- 8.9 In these circumstances, and given Chile’s refusal to negotiate the issue, the delimitation of the maritime zones between the Parties remains to be effected. That task falls to the Court in this case.

- 8.10 In the light of the fact that Peru is not a Party to the 1982 Convention on the Law of the Sea while Chile is, the applicable law in this case is customary international law as developed mainly by the jurisprudence of the Court with respect to maritime delimitation. In this connection, the delimitation provisions of the 1982 Convention, while not binding as a source of conventional law *per se*, reflect well-established principles of customary international law.
- 8.11 The primary aim of maritime delimitation is to achieve an equitable result by means of the application of equitable principles. This aim is reflected in the “equitable principles/relevant circumstances” or “equidistance/special circumstances” rule.
- 8.12 Application of this rule involves a two-step process. *First*, a provisional equidistance line is plotted which is a line, every point of which is equidistant from the nearest points on the baselines of the Parties from which the breadth of the outer limit of their maritime zones is measured. *Second*, the relevant circumstances characterizing the area to be delimited are assessed in order to determine whether any adjustment, or shifting, of the equidistance line is called for to arrive at an equitable result. The equitable nature of the delimitation line that emerges as a result of the application of the two initial steps in the process is then tested, using the ‘proportionality’ test.
- 8.13 The delimitation begins from the starting-point on the Parties’ land boundary which was agreed by the Parties in 1929-1930. Thereafter, the construction of the equidistance line is a straightforward exercise in the light of the geographical characteristics of the Parties’ relevant coasts. Given the uncomplicated nature of the Parties’ coasts, there are no reasons that justify an adjustment being made to the equidistance line in this case. A delimitation carried out pursuant to the equidistance method produces an equal division of the overlapping entitlements of the Parties and results in no undue encroachment or cut-off effect on the maritime projection of each Party’s respective coast.

- 8.14 The equidistance line fully satisfies the test of proportionality by allocating to each of the Parties maritime areas commensurate with the length of their relevant coasts fronting on the area to be delimited. For all of these reasons, the equidistance line produces an equitable result in this case.
- 8.15 Contrary to Chile's so-called "Presential Sea" claim, Peru possesses exclusive sovereign rights over the maritime areas situated within 200 nautical miles of its baselines that are more than 200 nautical miles from Chile's baselines.

SUBMISSIONS

For the reasons set out above, the Republic of Peru requests the Court to adjudge and declare that:

- (1) The delimitation between the respective maritime zones between the Republic of Peru and the Republic of Chile, is a line starting at “Point Concordia” (defined as the intersection with the low-water mark of a 10-kilometre radius arc, having as its centre the first bridge over the River Lluta of the Arica-La Paz railway) and equidistant from the baselines of both Parties, up to a point situated at a distance of 200 nautical miles from those baselines, and
- (2) Beyond the point where the common maritime border ends, Peru is entitled to exercise exclusive sovereign rights over a maritime area lying out to a distance of 200 nautical miles from its baselines.

The Republic of Peru reserves its right to amend these submissions as the case may be in the course of the present proceedings.

20 March 2009.

ALLAN WAGNER

Agent of the Republic of Peru

LIST OF ANNEXES (VOLUMES II AND III)

VOLUME II

OFFICIAL INSTRUMENTS OF PERU

Annex 1	Supreme Decree of 6 September 1833	3
Annex 2	Supreme Decree of 5 August 1840	7
Annex 3	Supreme Decree of 15 November 1921	11
Annex 4	Supreme Decree of 13 November 1934	15
Annex 5	General Order of the Navy No. 10 of 9 April 1940, Regulation of Captaincies and National Merchant Navy	19
Annex 6	Supreme Decree No. 781 of 1 August 1947	23
Annex 7	Supreme Decree No. 21 of 31 October 1951, Regulation of Captaincies and National Merchant Navy	29
Annex 8	Law No. 11780 of 12 March 1952, Petroleum Law	33
Annex 9	Supreme Resolution No. 23 of 12 January 1955, The Peruvian 200-Mile Maritime Zone	37
Annex 10	Legislative Resolution No. 12305 of 6 May 1955	41
Annex 11	Supreme Decree No. 570 of 5 July 1957	45
Annex 12	Law No. 15720 of 11 November 1965, Law on Civil Aeronautics	51
Annex 13	Decree Law No. 17752 of 24 July 1969, General Law on Waters	55
Annex 14	Decree Law No. 17824 of 23 September 1969, Corps of Captaincies and Coastguard	59
Annex 15	Decree Law No. 18225 of 14 April 1970, Providing for the Adoption of the General Mining Law	63
Annex 16	Decree Law No. 18810 of 25 March 1971, General Fisheries Law	67
Annex 17	Political Constitution of Peru of 1979	71
Annex 18	Law No. 25977 of 7 December 1992, General Fisheries Law	75

Annex 19	Political Constitution of Peru of 1993	79
Annex 20	Law No. 26620 of 30 May 1996, Law on the Control and Supervision of Maritime, Fluvial and Lacustrine Activities	83
Annex 21	Law No. 27261 of 9 May 2000, Law on Civil Aeronautics	87
Annex 22	Supreme Decree No. 028-DE/MGP of 25 May 2001, Regulation of the Law on the Control and Supervision of Maritime, Fluvial and Lacustrine Activities	91
Annex 23	Law No. 28621 of 3 November 2005, Peruvian Maritime Domain Baselines Law	95
Annex 24	Supreme Decree No. 047-2007-RE of 11 August 2007, Approval of the Chart of the Outer Limit – Southern Sector – of the Maritime Domain of Peru	117

OFFICIAL INSTRUMENTS OF CHILE

Annex 25	Chilean Civil Code of 1855	123
Annex 26	Supreme Decree (M) No. 1.340 of 14 June 1941	127
Annex 27	Presidential Declaration Concerning Continental Shelf of 23 June 1947	131
Annex 28	Law No. 8.944 of 21 January 1948, Water Code	137
Annex 29	Decree with Force of Law No. 292 of 25 July 1953, Fundamental Law of the Directorate General of Maritime Territory and Merchant Marine	141
Annex 30	Supreme Decree No. 432 of 23 September 1954, Approval of the Declarations and Conventions between Chile, Peru and Ecuador agreed at the First Conference on Exploitation and Conservation of the Marine Resources of the South Pacific	145
Annex 31	Decree No. 332 of 4 June 1963, Appointment of the Authority which Grants Fishing Permits to Foreign Flag Vessels in Chilean Jurisdictional Waters	153
Annex 32	Decree No. 453 of 18 July 1963, Regulation of Permits for the Exploitation by Factory Ships in the Specified Zone	157
Annex 33	Decree No. 519 of 16 August 1967, Approval of the Agreement Relating to a Special Maritime Frontier Zone	161
Annex 34	Decree No. 416 of 14 July 1977, Establishing the Straight Baselines Between Parallels 41° S and 56° S, Traced in the Chart I.H.A. (Hydrographic Institute of the Navy) N 5 of 1977	167
Annex 35	Law No. 18.302 of 16 April 1984, Law of Nuclear Security	179

Annex 36	Law No. 18.565 of 13 October 1986, Amendment to the Civil Code Regarding Maritime Spaces	183
Annex 37	Supreme Decree (M) No. 991 of 26 October 1987, Establishing the Jurisdiction of the Maritime Gobernations of the Republic and Establishing the Harbour Authorities and their Respective Jurisdictions	189
Annex 38	Law No. 19.080 of 28 August 1991, Amendment to Law 18.892, General Law on Fisheries and Aquaculture	193
Annex 39	Law No. 19.300 of 1 March 1994, General Environmental Law	197
Annex 40	Supreme Decree No. 210 of 4 May 1998, Establishing Areas for the Management and Exploitation of Benthonic Resources for Region I	201
Annex 41	Supreme Decree No. 598 of 15 October 1999, Applying Article No. 165 of the General Fishing and Aquaculture Law to the Swordfish	205
Annex 42	Decree No. 123 of 3 May 2004, Approval of the Policy for the Use of National Ports by Foreign Flag Vessels that Fish in the Adjacent High Seas	209
TREATIES		
Annex 43	Treaty of Peace and Friendship between the Republics of Peru and Chile (“The 1883 Treaty of Ancón”). Signed at Ancón on 20 October 1883	215
Annex 44	Treaty on International Penal Law Adopted at Montevideo on 23 January 1889	221
Annex 45	Treaty for the Settlement of the Dispute Regarding Tacna and Arica, with Additional Protocol. Signed at Lima on 3 June 1929	225
Annex 46	American Treaty on Pacific Settlement. “Pact of Bogotá”. Adopted at Bogotá, 30 April 1948	243
Annex 47	Declaration on The Maritime Zone. (“The 1952 Declaration of Santiago”). Signed at Santiago on 18 August 1952	257
Annex 48	Agreement Relating to the Organization of the Permanent Commission of the Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific. Signed at Santiago on 18 August 1952	263
Annex 49	Regulations for Maritime Hunting Operations in the Waters of the South Pacific. Signed at Santiago on 18 August 1952	269
Annex 50	Agreement Relating to a Special Maritime Frontier Zone. (“The 1954 Agreement on a Special Zone”). Signed at Lima on 4 December 1954	273

Annex 51	Complementary Convention to the Declaration of Sovereignty on the Two-Hundred-Mile Maritime Zone (“The 1954 Complementary Convention”). Signed in Lima on 4 December 1954	279
Annex 52	Protocol of Accession to the Declaration on “Maritime Zone” of Santiago. Signed at Quito on 6 October 1955	285
Annex 53	Treaty of Peace and Friendship between Chile and Argentina. Signed at Vatican City on 29 November 1984	293

ACTS

Annex 54	Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers of 21 July 1930	303
Annex 55	Act of 5 August 1930	311
Annex 56	Act of the First Session of the Juridical Affairs Commission of the First Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific of 11 August 1952	317
Annex 57	Act of the Second Session of Commission I of the Second Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific of 3 December 1954	321
Annex 58	Act of 12 April 1955: Agreement between Ecuador, Peru and Chile for a Joint Response to the United States and Great Britain on their Observations to the “Declaration of Santiago”	325
Annex 59	Document of 26 April 1968	333
Annex 60	Execution Act of 13 November 1999	339

VOLUME III

DIPLOMATIC CORRESPONDENCE

Annex 61	Note No. 11 (152/8/48) of 6 February 1948, from the Ambassador of the United Kingdom to the Minister of Foreign Affairs of Peru	357
Annex 62	Note No. 1030 of 2 July 1948, from the chargé d’affaires a.i. of the United States to the Minister of Foreign Affairs of Peru	361
Annex 63	Note No. (SM)-6-3/64 of 11 May 1952, from the Minister of Foreign Affairs of Peru to the Ambassador of the United States of America	365

Annex 64	Note No. 86 of 10 July 1952, from the Ambassador of Chile to the Minister of Foreign Affairs of Peru	379
Annex 65	Note No. (N): 6/17/14 of 12 April 1955, from the Minister of Foreign Affairs of Peru to the Ambassador of the United Kingdom	385
Annex 66	Note No. (M): 6/3/29 of 12 April 1955, from the Minister of Foreign Affairs of Peru to the chargé d'affaires a.i. of the United States	393
Annex 67	Memorandum of the Embassy of Peru in Chile of 26 May 1965	401
Annex 68	Memorandum of the Ministry of Foreign Affairs of Chile of 6 October 1965	405
Annex 69	Memorandum of the Embassy of Peru in Chile of 3 December 1965	409
Annex 70	Note 6-4/8 of 7 February 1967, from the Minister of Foreign Affairs of Peru to the Ambassador of Chile	413
Annex 71	Note No. (J) 6-4/9 of 6 February 1968, from the Ministry of Foreign Affairs of Peru to the chargé d'affaires a.i. of Chile	419
Annex 72	Note No. 81 of 8 March 1968, from the chargé d'affaires a.i. of Chile to the Minister of Foreign Affairs (in charge)	423
Annex 73	Note No. (J) 6-4/19 of 28 March 1968, from the Secretary General of Foreign Affairs of Peru to the chargé d'affaires a.i. of Chile	429
Annex 74	Note No. (J) 6-4/43 of 5 August 1968, from the Secretary General of Foreign Affairs to the chargé d'affaires of Chile	433
Annex 75	Note No. 242 of 29 August 1968, from the Embassy of Chile to the Ministry of Foreign Affairs of Peru	437
Annex 76	Diplomatic Memorandum annexed to Note 5-4-M/147 of 23 May 1986, from the Embassy of Peru to the Ministry of Foreign Affairs of Chile	441
Annex 77	Note RE (GAB) No. 6-4/113 of 20 October 2000, from the Ministry of Foreign Affairs of Peru to the Embassy of Chile	449
Annex 78	Note No. 7-1-SG/005 of 9 January 2001, from the Permanent Mission of Peru to the Secretary-General of the United Nations. Statement by the Government of Peru concerning parallel 18°21'00", referred to by the Government of Chile as the maritime boundary between Chile and Peru	453
Annex 79	Diplomatic Note (GAB) No. 6/43 of 19 July 2004, from the Minister of Foreign Affairs of Peru to the Minister of Foreign Affairs of Chile	459

Annex 80	Diplomatic Note No. 16723 of 10 September 2004, from the Minister of Foreign Affairs of Chile to the Minister of Foreign Affairs of Peru	467
Annex 81	Note No. 5-4-M/281 of 4 November 2004, from the Embassy of Peru to the Ministry of Foreign Affairs of Chile	471
Annex 82	Memorandum of 9 March 2005, from the Minister of Foreign Affairs of Peru to the Ambassador of Chile	475
Annex 83	Note 5-4-M/276 of 29 August 2005, from the Embassy of Peru to the Ministry of Foreign Affairs of Chile	481
Annex 84	Note No. 76 of 13 September 2005, from the Ministry of Foreign Affairs of Chile to the Embassy of Peru	485
Annex 85	Note No. 18934 of 28 November 2005, from the Minister of Foreign Affairs of Chile to the Ambassador of Peru	489

OTHER DOCUMENTS

Annex 86	Joint Report to the Arbitrator, Tacna-Arica Arbitration, by General John J. Pershing, First President, and Major General William Lassiter, Second President, of the Plebiscitary Commission, Tacna-Arica Arbitration	495
Annex 87	Agreement to Determine the Boundary Line and Place the Corresponding Boundary Markers at the Points in Disagreement in the Peruvian-Chilean Limits Demarcation Joint Commission of 24 April 1930 (Identical Instructions Sent to the Delegates)	501
Annex 88	Truman Proclamations 2667 and 2668 of 28 September 1945 and Executive Orders	507
Annex 89	Declaration of the President of Mexico on the Continental Shelf, 29 October 1945	513
Annex 90	Argentinean Declaration Proclaiming Sovereignty over the Epicontinental Sea and the Continental Shelf	519
Annex 91	Instructions given by the Minister of Foreign Affairs Mr. Manuel C. Gallagher to the Chairman of the Delegation of Peru, Dr. A. Ulloa for the Signing of the "Declaration of Santiago"	525
Annex 92	Message from the Chilean Executive to the Congress for the Approval of the 1952 Agreements. Santiago, 26 July 1954	529
Annex 93	Report of the Foreign Affairs Committee of the Chilean Senate Regarding the Project that Proposes the Approval of the 1952 Agreements. Approved in session of 3 August 1954	533
Annex 94	Report No. 41 of the Foreign Affairs Committee of the Chilean Deputies Chamber. Approved in session of 31 August 1954	539

Annex 95	Official Letter No. (M)-3-O-A/3 of 7 February 1955 from the Ministry of Foreign Affairs of Peru	545
Annex 96	Report of the Foreign Affairs Committee of the Congress of Peru on the Agreements and Conventions signed by Peru, Chile and Ecuador in Santiago, on 18 August 1952; and in Lima, 4 December 1954	551
Annex 97	Declaration of the Head of the Chilean Delegation contained in the Act of the Closing Ceremony of the Conference on the Exploitation and Conservation of Marine Resources of the South Pacific of 19 August 1952	557
Annex 98	Memoria del Ministro de Relaciones Exteriores (28 de julio de 1954 - 28 de julio de 1955). Lima, Talleres Gráficos P. L. Villanueva, 1955	561
Annex 99	Memoria del Ministro de Relaciones Exteriores (28 de julio de 1955 - 28 de julio de 1956). Lima, Talleres Gráficos P. L. Villanueva, 1956	583
Annex 100	Declaration by the Head of the Peruvian Delegation, Dr. Alberto Ulloa, at the First United Nations Conference on the Law of the Sea, 5 th Session, Geneva, 5 March 1958	597
Annex 101	Statement by Peruvian Delegate, Enrique García Sayán, at the Ninth Meeting of the Second Committee on the High Seas Regime of the First United Nations Conference on the Law of the Sea, 13 March 1958	601
Annex 102	Declaration by the Chairmen of the Delegations of Chile, Ecuador and Peru at the First United Nations Conference on the Law of the Sea, 27 April 1958	605
Annex 103	Declaration by the Peruvian Delegation at the Second United Nations Conference on the Law of the Sea, 27 April 1960	607
Annex 104	Statement made by Presidents Lanusse of Argentina and Allende of Chile. "Salta Declaration" of 24 July 1971	611
Annex 105	Joint Declaration of Presidents Juan Velasco Alvarado of Peru and Salvador Allende of Chile, 3 September 1971	617
Annex 106	Joint Declaration of the Ministers of Foreign Affairs of Peru and Chile, 16 June 1978	623
Annex 107	Declaration of the Head of the Peruvian Delegation, Ambassador Alfonso Arias-Schreiber at the Third United Nations Conference on the Law of the Sea, 27 August 1980	629
Annex 108	Joint Declaration of the Representatives of Chile, Colombia, Ecuador and Peru at the Third United Nations Conference on the Law of the Sea, 28 April 1982	631
Annex 109	Official Communiqué of the Ministry of Foreign Affairs of Chile of 13 June 1986	635

Annex 110	List of Geographical Co-ordinates Deposited by Chile with the Secretary-General of the United Nations on 21 September 2000	639
Annex 111	Chile's Defence White Book, 2002	643
Annex 112	Declaration of Santiago of 14 August 2002	647
Annex 113	Joint Communiqué of the Ministers of Foreign Affairs of Peru and Chile, Rio de Janeiro, 4 November 2004	657
Annex 114	Statement by Chile of 12 September 2007	661
Annex 115	Technical Aspects of Peru's Equidistance Claim Line	665

LIST OF MAPS AND FIGURES (VOLUME IV)

Chapter I

- | | | |
|-------------------|--|---|
| Figure 1.1 | First Official Map of Peru: Prepared in 1864 by order of the Minister of Foreign Affairs Mariano Felipe Paz-Soldán. <i>Mapa del Perú</i> | 3 |
| Figure 1.2 | Chile's Territorial Acquisitions Resulting from the War of the Pacific | 5 |

Chapter II

- | | | |
|-------------------|--|----|
| Figure 2.1 | General Configuration of the Peruvian and Chilean Coasts | 9 |
| Figure 2.2 | Ecuadorian Islands Near Peru's Northern Land Boundary & Lack of Peruvian Islands Near Peru's Southern Land Boundary | 11 |
| Figure 2.3 | Peru's Coastline and Straight Baselines | 13 |
| Figure 2.4 | Map Showing the Outer Limit – Southern Sector of Peru's Maritime Domain. <i>Carta del Límite Exterior – Sector Sur – del Dominio Marítimo del Perú</i> | 15 |
| Figure 2.5 | Chile's Coastline and Straight Baselines | 17 |
| Figure 2.6 | Chile's Maritime Claims Published in 2001 by the United Nations Division for Ocean Affairs and the Law of the Sea | 19 |

Chapter IV

- | | | |
|-------------------|---|----|
| Figure 4.1 | 200 Mile Limit Using the 'Arcs of Circles' Approach | 23 |
| Figure 4.2 | The 1939 Declaration of Panama | 25 |

Figure 4.3	The Coastal Lights Established by the 1969 Joint Commission	27
Figure 4.4	Chile's Supreme Decree No. 210	29
Chapter V		
Figure 5.1	Map No. 1 Annexed to the Chile/Argentina Maritime Delimitation Treaty of 1984. <i>Carta N° I</i>	33
Figure 5.2	Map published by Servicio Geográfico del Ejército del Perú, 1938. <i>Mapa Escolar del Perú</i>	35
Figure 5.3	Map published by Instituto Geográfico Militar del Perú, 1952. <i>Mapa del Perú</i>	37
Figure 5.4	Map published by Instituto Geográfico Militar del Perú, 1953. <i>Mapa del Perú</i>	39
Figure 5.5	Map published by Instituto Geográfico Militar del Perú, 1967. <i>República del Perú, Mapa Político</i>	41
Figure 5.6	Map published by Instituto Geográfico Nacional del Perú, 1989. <i>Atlas del Perú, Frontera Perú-Chile</i>	43
Figure 5.7	Map published by Instituto Geográfico Militar de Chile, 1935. <i>República de Chile</i>	45
Figure 5.8	Map published by Instituto Geográfico Militar de Chile, 1941	47
Figure 5.9	Map published by Instituto Geográfico Militar de Chile, 1954	49
Figure 5.10	Map published by Instituto Geográfico Militar de Chile, 1955	51
Figure 5.11	Map revised by Instituto Geográfico Militar de Chile, 1959. <i>Mapa de Chile</i>	53
Figure 5.12	Map published by Instituto Geográfico Militar de Chile, 1961. <i>Mapa de Chile</i>	55
Figure 5.13	Map published by Instituto Geográfico Militar de Chile, 1963. <i>Mapa de Chile</i>	57
Figure 5.14	Map published by Instituto Geográfico Militar de Chile, 1966. <i>Mapa de Chile</i>	59
Figure 5.15	Map published by Instituto Geográfico Militar de Chile, 1971. <i>Mapa de Chile</i>	61
Figure 5.16	Map published by Instituto Geográfico Militar de Chile, 1975. <i>Mapa de Chile</i>	63
Figure 5.17	Map published by Instituto Geográfico Militar de Chile, 1977. <i>Mapa de Chile</i>	65
Figure 5.18	Map published by Instituto Geográfico Militar de Chile, 1989. <i>Mapa de Chile Político Administrativo</i>	67

Figure 5.19	Arica 1973, Chilean Nautical Chart No. 101. <i>Chile, Arica</i>	69
Figure 5.20	Rada de Arica Chilean Nautical Chart No. 100, May 1979. <i>Chile, Rada de Arica a Bahía Mejillones del Sur</i>	71
Figure 5.21	Rada de Arica a Bahía de Iquique, Chilean Nautical Chart No. 110, November 1979. <i>Chile, Rada de Arica a Bahía de Iquique</i>	73
Figure 5.22	Chile/Argentina Maritime Boundary Agreement: 1984. 1986 Chilean Nautical Chart No. 1300. <i>Chile, Boca Oriental del Estrecho de Magallanes a Islas Diego Ramirez</i>	75
Figure 5.23	Rada y Puerto Arica 1989, Chilean Nautical Chart No. 101. <i>Chile, Rada y Puerto Arica</i>	77
Figure 5.24	Rada de Arica 1994, Chilean Nautical Chart No. 1000. <i>Chile, Rada de Arica a Bahía Mejillones del Sur</i>	79
Figure 5.25	Rada y Puerto Arica 1998, Chilean Nautical Chart No. 1111. <i>Chile, Rada y Puerto de Arica</i>	81
Figure 5.26	Map Límite Chile-Peru, Chilean National Atlas 2005	83

Chapter VI

Figure 6.1	Bathymetry of the Relevant Area	87
Figure 6.2	The Relevant Coasts	89
Figure 6.3	The Relevant Area	91
Figure 6.4	Initial Sector of the Land Boundary as Defined by the 1929 Treaty	93
Figure 6.5	‘Point Concordia’ vs. ‘Marker Concordia’	95
Figure 6.6	The Equidistance Methodology	97
Figure 6.7	The Bi-Sector Methodology	99
Figure 6.8	Inequitable Cutoff Effect Caused by Chile’s Delimitation Position & Balanced Cutoff Effect of Peru’s Delimitation Claim	101
Figure 6.9	Proportionality Test Applied to The Equidistance Methodology	103
Figure 6.10	Proportionality Test Applied to Chile’s Delimitation Claim	105

Chapter VII

Figure 7.1	Chile’s Claim to Parts of Peru’s Maritime Domain	109
Figure 7.2	Maritime Areas that Pertain to Chile According to the Chilean Navy	111

Figure 7.3	Chile's Mar Presencial, 1992. Chilean Nautical Chart No. 22. <i>Chile, Mar Presencial, Formas del Relieve Submarino</i>	113
Figure 7.4	Map of "El Espacio Geográfico Chileno". Chilean National Atlas, 2005	115
Figure 7.5	Limited Extent of the Continental Shelf in the Relevant Area	117

LIST OF DOCUMENTS DEPOSITED WITH THE REGISTRY

OFFICIAL INSTRUMENTS OF PERU

1. Supreme Decree of 6 September 1833.
2. Supreme Decree of 5 August 1840.
3. Supreme Decree of 15 November 1921.
4. Supreme Decree of 13 November 1934.
5. General Order of the Navy No. 10 of 9 April 1940, Regulation of Captaincies and National Merchant Navy.
6. Supreme Decree No. 781 of 1 August 1947.
7. Supreme Decree No. 21 of 31 October 1951, Regulation of Captaincies and National Merchant Navy.
8. Law No. 11780 of 12 March 1952, Petroleum Law.
9. Supreme Resolution No. 23 of 12 January 1955, The Peruvian 200-Mile Maritime Zone.
10. Legislative Resolution No. 12305 of 6 May 1955.
11. Supreme Decree No. 570 of 5 July 1957.
12. Law No. 15720 of 11 November 1965, Law on Civil Aeronautics.
13. Decree Law No. 17752 of 24 July 1969, General Law on Waters.
14. Decree Law No. 17824 of 23 September 1969, Corps of Captaincies and Coastguard.
15. Decree Law No. 18225 of 14 April 1970, Providing for the Adoption of the General Mining Law.
16. Decree Law No. 18810 of 25 March 1971, General Fisheries Law.
17. Law No. 25977 of 7 December 1992, General Fisheries Law .
18. Law No. 26620 of 30 May 1996, Law on the Control and Supervision of Maritime, Fluvial and Lacustrine Activities.
19. Law No. 27261 of 9 May 2000, Law on Civil Aeronautics.

20. Supreme Decree No. 028-DE/MGP of 25 May 2001, Regulation of the Law on the Control and Supervision of Maritime, Fluvial and Lacustrine Activities.
21. Supreme Decree No. 047-2007-RE of 11 August 2007, Approval of the Chart of the Outer Limit – Southern Sector – of the Maritime Domain of Peru.

OFFICIAL INSTRUMENTS OF CHILE

22. Supreme Decree (M) No. 1.340 of 14 June 1941.
23. Presidential Declaration Concerning Continental Shelf of 23 June 1947.
24. Law No. 8.944 of 21 January 1948, Water Code.
25. Decree with Force of Law No. 292 of 25 July 1953, Fundamental Law of the Directorate General of Maritime Territory and Merchant Marine.
26. Supreme Decree No. 432 of 23 September 1954, Approval of the Declarations and Conventions between Chile, Peru and Ecuador agreed at the First Conference on Exploitation and Conservation of the Marine Resources of the South Pacific.
27. Decree No. 332 of 4 June 1963, Appointment of the Authority which Grants Fishing Permits to Foreign Flag Vessels in Chilean Jurisdictional Waters.
28. Decree No. 453 of 18 July 1963, Regulation of Permits for the Exploitation by Factory Ships in the Specified Zone.
29. Decree No. 519 of 16 August 1967, Approval of the Agreement Relating to a Special Maritime Frontier Zone.
30. Decree No. 416 of 14 July 1977, Establishing the Straight Baselines Between Parallels 41° S and 56° S, Traced in the Chart I.H.A. (Hydrographic Institute of the Navy) N 5 of 1977.
31. Law No. 18.302 of 16 April 1984, Law of Nuclear Security.
32. Law No. 18.565 of 13 October 1986, Amendment to the Civil Code Regarding Maritime Spaces.
33. Supreme Decree (M) No. 991 of 26 October 1987, Establishing the Jurisdiction of the Maritime Governations of the Republic and Establishing the Harbour Authorities and their Respective Jurisdictions.
34. Law No. 19.080 of 28 August 1991, Amendment to Law 18.892, General Law on Fisheries and Aquaculture.
35. Law No. 19.300 of 1 March 1994, General Environmental Law.
36. Supreme Decree No. 210 of 4 May 1998, Establishing Areas for the Management and Exploitation of Benthonic Resources for Region I.
37. Supreme Decree No. 598 of 15 October 1999, Applying Article No. 165 of the General Fishing and Aquaculture Law to the Swordfish.
38. Decree No. 123 of 3 May 2004, Approval of the Policy for the Use of National Ports by Foreign Flag Vessels that Fish in the Adjacent High Seas.

TREATIES

39. Treaty of Peace and Friendship between the Republics of Peru and Chile (“The 1883 Treaty of Ancón”). Signed at Ancón on 20 October 1883.
40. Agreement Relating to a Special Maritime Frontier Zone. (“The 1954 Agreement on a Special Zone”). Signed at Lima on 4 December 1954.
41. Complementary Convention to the Declaration of Sovereignty on the Two-Hundred-Mile Maritime Zone (“The 1954 Complementary Convention”). Signed in Lima on 4 December 1954.
42. Protocol of Accession to the Declaration on “Maritime Zone” of Santiago. Signed at Quito on 6 October 1955.

ACTS

43. Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers of 21 July 1930.
44. Act of 5 August 1930.
45. Act of the First Session of the Juridical Affairs Commission of the First Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific of 11 August 1952.
46. Act of the Second Session of Commission I of the Second Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific of 3 December 1954.
47. Act of 12 April 1955: Agreement between Ecuador, Peru and Chile for a Joint Response to the United States and Great Britain on their Observations to the “Declaration of Santiago”.
48. Document of 26 April 1968.
49. Execution Act of 13 November 1999.

DIPLOMATIC CORRESPONDENCE

50. Note No. 11 (152/8/48) of 6 February 1948, from the Ambassador of the United Kingdom to the Minister of Foreign Affairs of Peru.
51. Note No. 1030 of 2 July 1948, from the chargé d’affaires a.i. of the United States to the Minister of Foreign Affairs of Peru.
52. Note No. (SM)-6-3/64 of 11 May 1952, from the Minister of Foreign Affairs of Peru to the Ambassador of the United States of America.
53. Note No. 86 of 10 July 1952, from the Ambassador of Chile to the Minister of Foreign Affairs of Peru.

54. Note No. (N): 6/17/14 of 12 April 1955, from the Minister of Foreign Affairs of Peru to the Ambassador of the United Kingdom.
55. Note No. (M): 6/3/29 of 12 April 1955, from the Minister of Foreign Affairs of Peru to the chargé d'affaires a.i. of the United States.
56. Memorandum of the Embassy of Peru in Chile of 26 May 1965.
57. Memorandum of the Ministry of Foreign Affairs of Chile of 6 October 1965.
58. Memorandum of the Embassy of Peru in Chile of 3 December 1965.
59. Note 6-4/8 of 7 February 1967, from the Minister of Foreign Affairs of Peru to the Ambassador of Chile.
60. Note No. (J) 6-4/9 of 6 February 1968, from the Ministry of Foreign Affairs of Peru to the chargé d'affaires a.i. of Chile.
61. Note No. 81 of 8 March 1968, from the chargé d'affaires a.i. of Chile to the Minister of Foreign Affairs (in charge).
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63. Note No. (J) 6-4/43 of 5 August 1968, from the Secretary General of Foreign Affairs to the chargé d'affaires of Chile.
64. Note No. 242 of 29 August 1968, from the Embassy of Chile to the Ministry of Foreign Affairs of Peru.
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69. Memorandum of 9 March 2005, from the Minister of Foreign Affairs of Peru to the Ambassador of Chile.
70. Note 5-4-M/276 of 29 August 2005, from the Embassy of Peru to the Ministry of Foreign Affairs of Chile.
71. Note No. 76 of 13 September 2005, from the Ministry of Foreign Affairs of Chile to the Embassy of Peru.
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73. Joint Report to the Arbitrator, Tacna-Arica Arbitration, by General John J. Pershing, First President, and Major General William Lassiter, Second President, of the Plebiscitary Commission, Tacna-Arica Arbitration.
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82. Memoria del Ministro de Relaciones Exteriores (28 de julio de 1955 - 28 de julio de 1956). Lima, Talleres Gráficos P. L. Villanueva, 1956.
83. Statement made by Presidents Lanusse of Argentina and Allende of Chile. "Salta Declaration" of 24 July 1971.
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87. List of Geographical Co-ordinates Deposited by Chile with the Secretary-General of the United Nations on 21 September 2000.
88. Declaration of Santiago of 14 August 2002.
89. Joint Communiqué of the Ministers of Foreign Affairs of Peru and Chile, Rio de Janeiro, 4 November 2004.