INTERNATIONAL COURT OF JUSTICE

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Press Release
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Maritime Dispute (Peru v. Chile)

The Court determines the course of the single maritime boundary between Peru and Chile

THE HAGUE, 27 January 2014. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, has today rendered its Judgment in the case concerning the Maritime Dispute (Peru v. Chile).

In its Judgment, which is final, without appeal and binding on the Parties, the Court,

(1) Decides, by fifteen votes to one, that the starting-point of the single maritime boundary delimiting the respective maritime areas between the Republic of Peru and the Republic of Chile is the intersection of the parallel of latitude passing through Boundary Marker No. 1 with the low-water line;

(2) Decides, by fifteen votes to one, that the initial segment of the single maritime boundary follows the parallel of latitude passing through Boundary Marker No. 1 westward;

(3) Decides, by ten votes to six, that this initial segment runs up to a point (Point A) situated at a distance of 80 nautical miles from the starting-point of the single maritime boundary;

(4) Decides, by ten votes to six, that from Point A, the single maritime boundary shall continue south-westward along the line equidistant from the coasts of the Republic of Peru and the Republic of Chile, as measured from that point, until its intersection (at Point B) with the 200-nautical-mile limit measured from the baselines from which the territorial sea of the Republic of Chile is measured. From Point B, the single maritime boundary shall continue southward along that limit until it reaches the point of intersection (Point C) of the 200-nautical-mile limits measured from the baselines from which the territorial seas of the Republic of Peru and the Republic of Chile, respectively, are measured;

(5) Decides, by fifteen votes to one, that, for the reasons given in paragraph 189 [of the present Judgment], it does not need to rule on the second final submission of the Republic of Peru.

1. Whether there is an agreed maritime boundary

The Court recalls that, according to Peru's Application, these proceedings concern "the delimitation of the boundary between the maritime zones of Peru and Chile in the Pacific Ocean". Peru argues that no agreed maritime boundary exists between the two countries and asks the Court to plot a boundary line using the equidistance method in order to achieve an equitable result. For its part, Chile contends that the Court should not effect any delimitation, since there is already an international maritime boundary, agreed between both Parties, along the parallel of latitude passing through the starting-point of the Peru-Chile land boundary and extending to a minimum of 200 nautical miles.

In order to settle the dispute before it, the Court must thus first ascertain whether an agreed maritime boundary exists, as Chile claims. For that purpose, the Court first turns to the 1947 Proclamations, whereby Chile and Peru unilaterally proclaimed certain maritime rights extending 200 nautical miles from their respective coasts. Noting that the Parties are in agreement that these Proclamations do not themselves establish an international maritime boundary, the Court considers that the language of these instruments, as well as their provisional nature, precludes an interpretation of them as reflecting a shared understanding of the Parties concerning maritime delimitation.

The Court then analyses the 1952 Santiago Declaration, whereby 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". The Court finds that the 1952 Santiago Declaration is an international treaty. It concludes that, although this Declaration contains some elements which are relevant to the issue of maritime delimitation, namely concerning the limits between certain insular maritime zones and those zones generated by the continental coasts which abut such insular maritime zones, it did not establish a lateral maritime boundary between Peru and Chile along the parallel of latitude running into the Pacific Ocean from the seaward terminus of their land boundary. It nevertheless observes that, at the time of the Declaration, there might have been some sort of shared understanding among the States parties of a more general nature concerning their maritime boundaries.

The Court next considers later agreements and arrangements adopted by Peru, Chile and Ecuador. In particular, it analyses the 1954 Special Maritime Frontier Zone Agreement, which established a zone of tolerance, starting at a distance of 12 nautical miles from the coast, "of 10 nautical miles on either side of the parallel which constitutes the maritime boundary". That zone was intended to benefit small and ill-equipped vessels, in order to avoid "friction between the countries concerned" as a result of inadvertent violations of the maritime frontier by those vessels. The Court finds that the terms of this Agreement acknowledge in a binding international agreement that a maritime boundary already exists. The Court, however, notes that this Agreement does not indicate when and by what means that boundary was agreed upon. It therefore considers that the Parties' express acknowledgment of the existence of a maritime boundary can only reflect a tacit agreement which they had reached earlier and which was "cemented" by the 1954 Special Maritime Frontier Zone Agreement. The Court further observes that this Agreement gives no indication of the nature of the maritime boundary. Nor does it indicate its extent, except that its provisions make it clear that the maritime boundary extends beyond 12 nautical miles from the coast.

2. The nature of the agreed maritime boundary

The Court then turns to the question of the nature of the agreed maritime boundary, that is, whether it is a single maritime boundary applicable to the water column, the sea-bed and its subsoil, or a boundary applicable only to the water column. Pointing out that the tacit agreement of the Parties must be understood in the context of the 1947 Proclamations and the 1952 Santiago

Declaration — which expressed claims to the sea-bed and to waters above the sea-bed and their resources without the Parties drawing any distinction between these spaces — the Court concludes that the boundary is an all-purpose one.

3. The extent of the agreed maritime boundary

In order to determine the extent of the agreed maritime boundary, the Court first examines the relevant practice of the Parties in the early and mid-1950s, more specifically their fishing potential and activity. It observes that the information referred to by the Parties shows that the fish species which were being taken in the early 1950s were generally to be found within a range of 60 nautical miles from the coast. The Court further observes that the catch figures indicate that the principal maritime activity at that time was fishing undertaken by small vessels. It also takes note of the orientation of the coast in this region, and the location of the most important relevant ports of the Parties at the time.

In that context, the Court recalls that boats departing from Arica (a Chilean port situated just 15 km to the south of the seaward terminus of the land boundary) to catch the above-mentioned species, in a west-north-west direction, in the range of 60 nautical miles from the coast, which runs essentially from north to south at this point, would not cross the parallel beyond a point approximately 57 nautical miles from the starting-point of the maritime boundary. The orientation of the coast turns sharply to the north-west in this region (see sketch-map No. 2), such that, on the Peruvian side, fishing boats departing seaward from Ilo (situated about 120 km north-west of the seaward terminus of the land boundary), in a south-west direction, to the range of those same species would cross the parallel of latitude at a point up to approximately 100 nautical miles from the starting-point of the maritime boundary.

While concluding that the all-purpose nature of the maritime boundary means that evidence concerning fisheries activity, in itself, cannot be determinative of the extent of that boundary, the Court nonetheless finds that the fisheries activity provides some support for the view that the Parties, at the time when they acknowledged the existence of an agreed maritime boundary between them, were unlikely to have considered that it extended all the way to the 200-nautical-mile limit.

The Court then moves to the broader context and examines contemporaneous developments in the law of the sea in the early 1950s. It observes, in particular, that claims to a maritime zone extending to a minimum distance of 200 nautical miles, such as the ones made by the Parties in the 1952 Santiago Declaration, were not in accordance with international law at the time.

On the basis of the fishing activities of the Parties in the early 1950s, which were conducted up to a distance of some 60 nautical miles from the main ports in the area, the relevant practice of other States and the work of the International Law Commission on the Law of the Sea at that time, the Court is of the view that the evidence at its disposal does not allow it to conclude that the agreed maritime boundary along the parallel extended beyond 80 nautical miles from its starting-point.

In light of this tentative conclusion, the Court then examines further elements of practice, for the most part subsequent to 1954, which may be of relevance to the issue of the extent of the agreed maritime boundary. It considers, however, that these elements do not lead it to change its position.

Therefore, based on an assessment of the entirety of the relevant evidence presented to it, the Court concludes that the agreed maritime boundary between the Parties extended to a distance of 80 nautical miles along the parallel from its starting-point.

4. The starting-point of the agreed maritime boundary

In order to determine the starting-point of the maritime boundary, the Court considers in particular the record of the process leading to the 1968-1969 lighthouse arrangements, whereby the Parties decided to build lighthouses "to materialise the parallel of the maritime frontier originating" at the first marker of the land boundary. The Court is of the view that the 1968-1969 lighthouse arrangements serve as compelling evidence that the agreed maritime boundary follows the parallel that passes through Marker No. 1.

The Court therefore concludes that the starting-point of the maritime boundary between the Parties is the intersection of the parallel of latitude passing through Boundary Marker No. 1 with the low-water line.

5. The course of the maritime boundary from Point A

Having concluded that an agreed single maritime boundary exists between the Parties and that that boundary starts at the intersection of the parallel of latitude passing through Boundary Marker No. 1 with the low-water line and continues for 80 nautical miles along that parallel, the Court turns to the determination of the course of the maritime boundary from that Point on.

To effect the delimitation, the Court applies the three-stage methodology it usually employs. In the first stage, the Court constructs a provisional equidistance line unless there are compelling reasons preventing that. At the second stage, it considers whether there are relevant circumstances which may call for an adjustment of that line to achieve an equitable result. At the third stage, the Court conducts a disproportionality test in which it assesses whether the effect of the line, as adjusted, is such that the Parties' respective shares of the relevant area are markedly disproportionate to the lengths of their relevant coasts.

First, the Court selects base points and constructs a provisional equidistance line which starts at the endpoint of the existing maritime boundary (Point A). The provisional equidistance line thus constructed runs in a general south-west direction, almost in a straight line, reflecting the smooth character of the two coasts, until it reaches the 200-nautical-mile limit measured from the Chilean baselines (Point B). Seaward of this point the 200-nautical-mile projections of the Parties' coasts no longer overlap.

Before continuing the application of its usual methodology, the Court recalls that, in its second submission, Peru requested it to adjudge and declare that, beyond the point where the common maritime boundary ends, Peru is entitled to exercise sovereign rights over a maritime area lying out to a distance of 200 nautical miles from its baselines (this claim is in relation to the area in a darker shade of blue in sketch-map No. 2). The Court, however, finds that, given that the agreed boundary line along the parallel of latitude ends at 80 nautical miles from the coast and that it has decided that, beyond the endpoint of the agreed boundary, it will proceed with the delimitation of the overlapping maritime entitlements of the Parties by drawing an equidistance line, Peru's second submission has become moot. The Court therefore need not rule on it.

The Court then observes that, from Point B, the 200-nautical-mile limit of Chile's maritime entitlement runs in a generally southward direction. The final segment of the maritime boundary proceeds along that limit from Point B to Point C, where the 200-nautical-mile limits of the Parties' maritime entitlements intersect.

Secondly, the Court considers that no relevant circumstances call for an adjustment of the provisional equidistance line.

Thirdly, the Court is of the view that no significant disproportion is evident, such as would call into question the equitable nature of the provisional equidistance line.

6. Conclusion

The Court concludes that the maritime boundary between the Parties starts at the intersection of the parallel of latitude passing through Boundary Marker No. 1 with the low-water line, and extends for 80 nautical miles along that parallel of latitude to Point A. From this point, the maritime boundary runs along the equidistance line to Point B, and then along the 200-nautical-mile limit measured from the Chilean baselines to Point C.

In view of the circumstances of the case, the Court has defined the course of the maritime boundary between the Parties without determining the precise geographical co-ordinates. It recalls that it has not been asked to do so in the Parties' final submissions. The Court therefore expects that the Parties will determine these co-ordinates in accordance with the Judgment, in the spirit of good neighbourliness.

Composition of the Court

The Court was composed as follows: President Tomka; Vice-President Sepúlveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Xue, Donoghue, Gaja, Sebutinde, Bhandari; Judges ad hoc Guillaume, Orrego Vicuña; Registrar Couvreur.

President TOMKA and Vice-President SEPÚLVEDA-AMOR append declarations to the Judgment of the Court; Judge OWADA appends a separate opinion to the Judgment of the Court; Judge SKOTNIKOV appends a declaration to the Judgment of the Court; Judges XUE, GAJA, BHANDARI and Judge ad hoc ORREGO VICUÑA append a joint dissenting opinion to the Judgment of the Court; Judges DONOGHUE and GAJA append declarations to the Judgment of the Court; Judge SEBUTINDE appends a dissenting opinion to the Judgment of the Court; Judge ad hoc GUILLAUME appends a declaration to the Judgment of the Court; Judge ad hoc ORREGO VICUÑA appends a separate, partly concurring and partly dissenting, opinion to the Judgment of the Court.

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A summary of the Judgment appears in the document "Summary No. 2014/1". This press release, the summary, and the full text of the Judgment can be found on the Court's website (www.icj-cij.org), under the heading "Cases".

Note: The Court's press releases do not constitute official documents.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United

Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the "World Court", it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an independent judicial body composed of Lebanese and international judges, which is not a United Nations tribunal and does not form part of the Lebanese judicial system), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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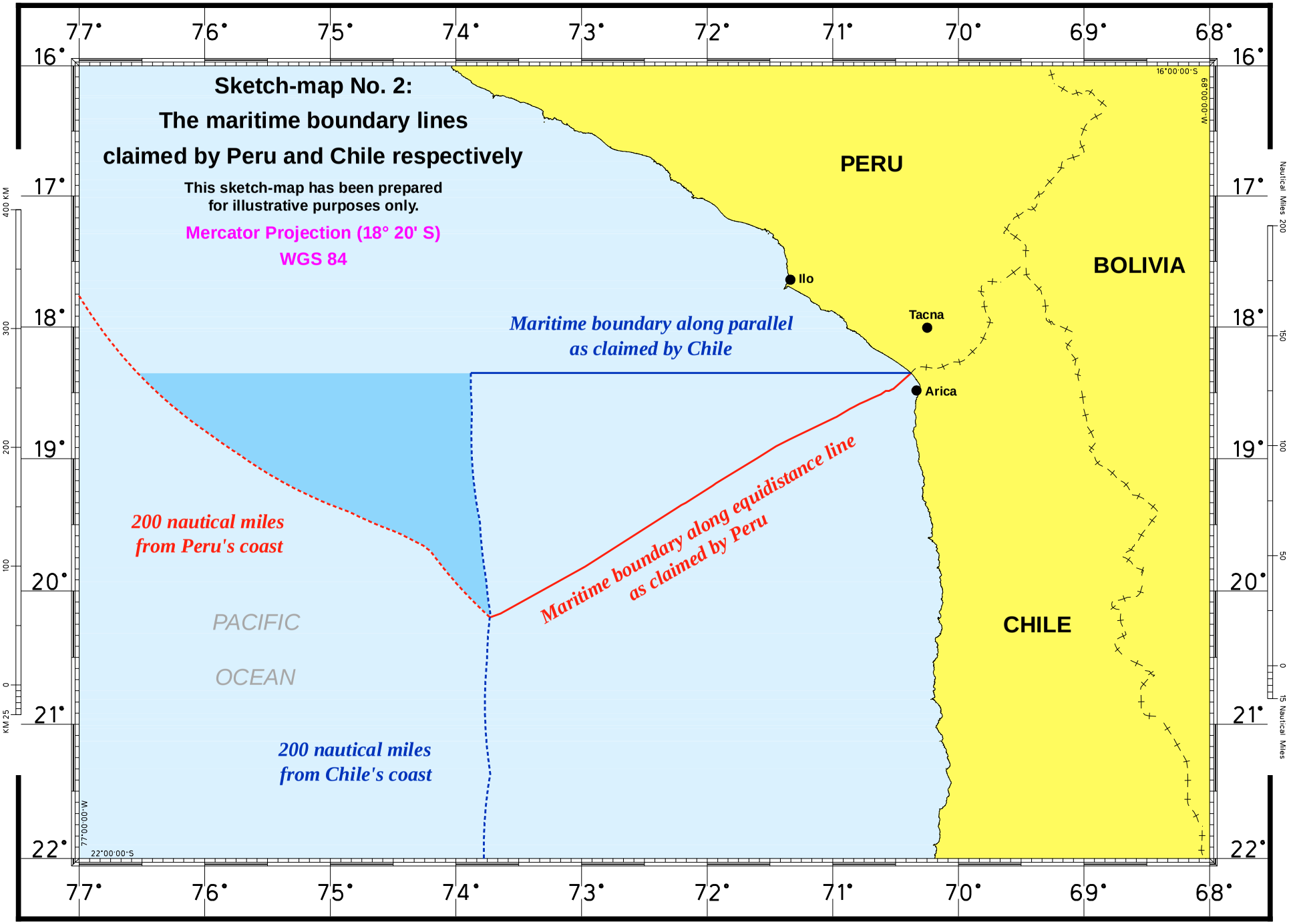
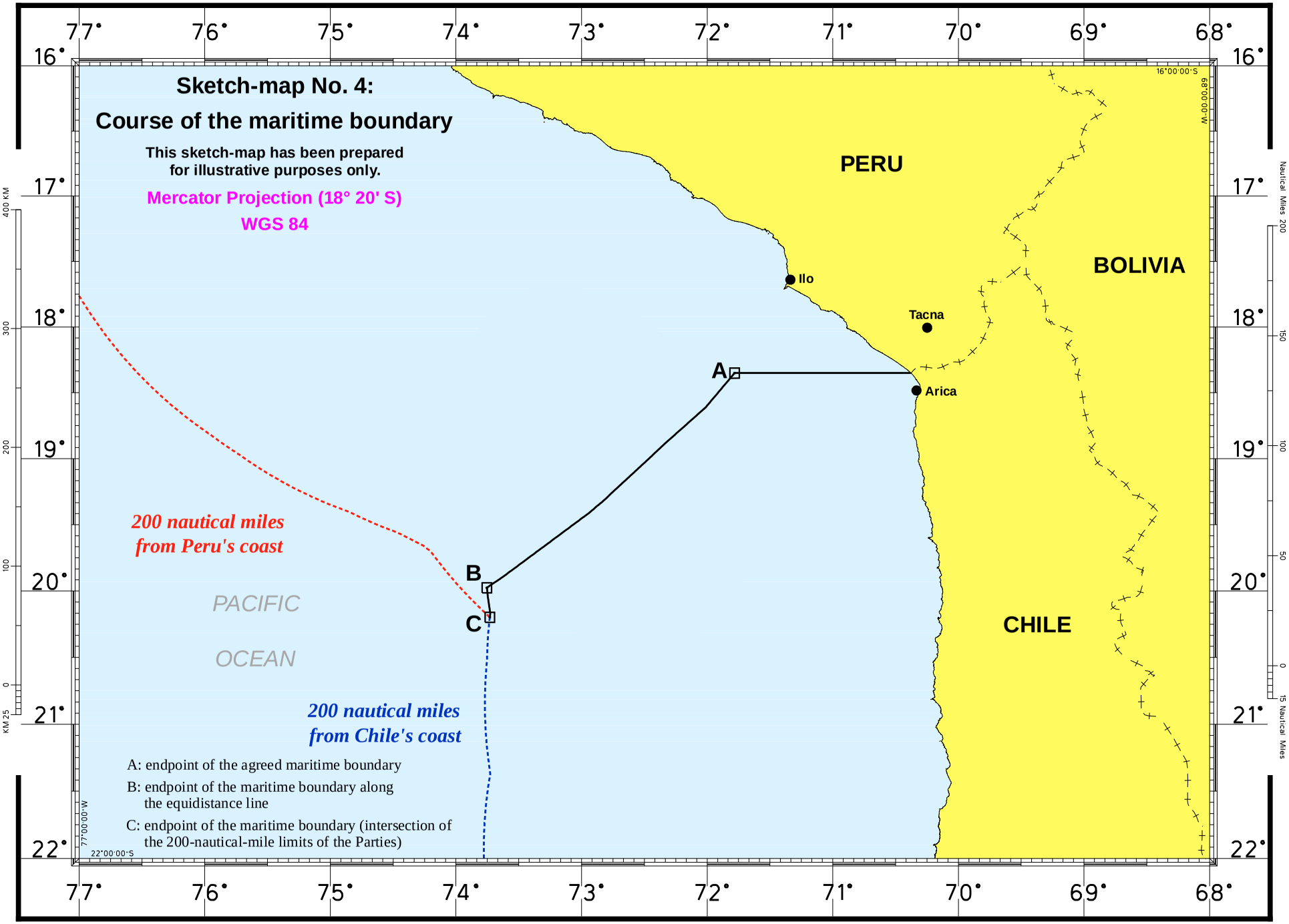
Annex to Press Release 2014/2

— Sketch-map No. 2: The maritime boundary lines claimed by Peru and Chile respectively

— Sketch-map No. 4: Course of the maritime boundary


Sketch-map No. 2:
The maritime boundary lines
claimed by Peru and Chile respectively
This sketch-map has been prepared
for illustrative purposes only.
Mercator Projection (18° 20' S)
WGS 84
PERU
BOLIVIA
CHILE
Ilo
Tacna
Arica
Maritime boundary along parallel
as claimed by Chile
Maritime boundary along equidistance line
as claimed by Peru
200 nautical miles
from Peru's coast
200 nautical miles
from Chile's coast
PACIFIC
OCEAN
77°00'00"W
22°00'00"S
16°00'00"S
68°00'00"W
77°
76°
75°
74°
73°
72°
71°
70°
69°
68°
16°
17°
18°
19°
20°
21°
22°
400 KM
300
200
100
0
KM 25
Nautical Miles 200
150
100
50
0
15 Nautical Miles


Sketch-map No. 4:
Course of the maritime boundary
This sketch-map has been prepared for illustrative purposes only.
Mercator Projection (18° 20' S)
WGS 84
PERU
BOLIVIA
CHILE
Ilo
Tacna
Arica
A
B
C
200 nautical miles from Peru's coast
200 nautical miles from Chile's coast
PACIFIC
OCEAN
A: endpoint of the agreed maritime boundary
B: endpoint of the maritime boundary along the equidistance line
C: endpoint of the maritime boundary (intersection of the 200-nautical-mile limits of the Parties)
77°00'00"-W
22°00'00"-S
16°00'00"-S
68°00'00"-W
Nautical Miles 200
150
100
50
0
15 Nautical Miles
400 KM
300
200
100
0
KM 25
77° 76° 75° 74° 73° 72° 71° 70° 69° 68°
16° 17° 18° 19° 20° 21° 22°