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Summary
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Maritime Dispute (Peru v. Chile)

Summary of the Judgment of 27 January 2014

Chronology of the procedure (paras. 1-15)

The Court recalls that, on 16 January 2008, the Republic of Peru (hereinafter "Peru") filed in the Registry of the Court an Application instituting proceedings against the Republic of Chile (hereinafter "Chile") in respect of a dispute concerning, on the one hand, "the delimitation of the boundary between the maritime zones of the two States in the Pacific Ocean, beginning at a point on the coast called Concordia . . . the terminal point of the land boundary established pursuant to the Treaty . . . of 3 June 1929" and, on the other, the recognition in favour of Peru of a "maritime zone lying within 200 nautical miles of Peru's coast" and which should thus appertain to it, "but which Chile considers to be part of the high seas".

I. GEOGRAPHY (para. 16)

The area within which the delimitation sought is to be carried out lies in the Pacific Ocean. In that region, Peru's coast runs in a north-west direction from the starting-point of the land boundary between the Parties on the Pacific coast and Chile's generally follows a north-south orientation. (See sketch-map No. 1: Geographical context.)

II. HISTORICAL BACKGROUND (paras. 17-21)

Having succinctly recalled the relevant historical facts, the Court more specifically observes that the land boundary between Peru and Chile was fixed in the 1929 Treaty of Lima. It also notes that, in 1947, both Parties unilaterally proclaimed certain maritime rights extending 200 nautical miles from their coasts (the relevant instruments are hereinafter referred to collectively as the "1947 Proclamations"). The Court then recalls that in subsequent years Chile, Ecuador and Peru negotiated twelve instruments to which the Parties to the present case make reference. Four of them, among which the Declaration on the Maritime Zone, referred to as the Santiago Declaration, were adopted in August 1952 during the Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific. Six others — including the Complementary Convention to the Santiago Declaration, the Agreement relating to Measures of Supervision and Control in the Maritime Zones of the Signatory Countries and the Agreement Relating to a Special Maritime Frontier Zone — were adopted in Lima in December 1954. And, finally, two agreements relating

to the functioning of the Permanent Commission for the South Pacific were signed in Quito in May 1967.

III. POSITIONS OF THE PARTIES (paras. 22-23)

The Court recalls that Peru and Chile have adopted fundamentally different positions in this case. 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 1952 Santiago Declaration established an international maritime boundary 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. It therefore asks the Court to confirm the boundary line accordingly. (See sketch-map No. 2: The maritime boundary lines claimed by Peru and Chile respectively.)

Peru also argues that, beyond the point where the common maritime boundary ends, it is entitled to exercise exclusive sovereign rights over a maritime area lying out to a distance of 200 nautical miles from its baselines. (This maritime area is depicted on sketch-map No. 2 in a darker shade of blue.) Chile responds that Peru has no entitlement to any maritime zone extending to the south of the parallel of latitude along which, as Chile maintains, the international maritime boundary runs.

IV. WHETHER THERE IS AN AGREED MARITIME BOUNDARY (paras. 24-151)

In order to settle the dispute before it, the Court must first ascertain whether an agreed maritime boundary exists, as Chile claims.

1. The 1947 Proclamations of Chile and Peru (paras. 25-44)

The Court begins by examining 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 the 1947 Proclamations do not themselves establish an international maritime boundary, the Court considers them only for the purpose of ascertaining whether those texts represent evidence of the Parties' understanding as far as the establishment of a future maritime boundary between them is concerned. The Court notes that the language of the 1947 Proclamations, as well as their provisional nature, precludes an interpretation of them as reflecting a shared understanding of the Parties concerning maritime delimitation. At the same time, the Court observes that the Parties' 1947 Proclamations contain similar claims concerning their rights and jurisdiction in the maritime zones, giving rise to the necessity of establishing the lateral limits of these zones in the future.

2. The 1952 Santiago Declaration (paras. 45-70)

Turning to the 1952 Santiago Declaration, the Court observes that it is no longer contested that this instrument is an international treaty. The Court's task is to ascertain whether it established a maritime boundary between the Parties. In order to do so, the Court applies the rules of interpretation recognized under customary international law, as reflected in the Vienna Convention on the Law of Treaties. The Court first considers the ordinary meaning to be given to the terms of the 1952 Santiago Declaration in their context. It notes that the Declaration does not make express reference to the delimitation of maritime boundaries of the zones generated by the continental coasts of its States parties. It nonetheless observes that the Santiago Declaration contains certain elements which are relevant to the issue of maritime delimitation. But, having examined the relevant paragraphs of the Declaration, the Court concludes that they go no further than establishing the Parties' agreement concerning the limits between certain insular maritime zones and those zones generated by the continental coasts which abut such insular maritime zones.

The Court then considers the object and purpose of the 1952 Santiago Declaration, observing that the Preamble focuses on the conservation and protection of the Parties' natural resources for the purposes of economic development, through the extension of their maritime zones.

The Court adds that it does not need, in principle, to resort to supplementary means of interpretation, such as the travaux préparatoires of the 1952 Santiago Declaration and the circumstances of its conclusion, to determine the meaning of that Declaration. Nevertheless, it has, as in other cases, considered the relevant material, which confirms the above interpretation of the Declaration.

The Court however notes that various elements, such as the original Chilean proposal presented to the 1952 Conference (which appeared intended to effect a general delimitation of the maritime zones along lateral lines), and the use of the parallel as the limit of the maritime zone of an island of one State party located less than 200 nautical miles from the general maritime zone of another State party, suggest that there might have been some sort of shared understanding among the States parties of a more general nature concerning their maritime boundaries.

The Court concludes that, contrary to Chile's submission, the 1952 Santiago Declaration did not establish a lateral maritime boundary between Peru and Chile along the line of latitude running into the Pacific Ocean from the seaward terminus of their land boundary.

3. The various 1954 Agreements (paras. 71-95)

The Court next considers agreements adopted by Peru and Chile in 1954, and which Chile invokes in support of its claim that the parallel of latitude constitutes the maritime boundary.

Among the 1954 Agreements, Chile emphasizes, in particular, the Complementary Convention to the 1952 Santiago Declaration, the Agreement relating to Measures of Supervision and Control of the Maritime Zones of the Signatory Countries and the Special Maritime Frontier Zone Agreement. The Court observes that it is common ground that the proposed Complementary Convention was the main instrument addressed by Chile, Ecuador and Peru as they prepared for the South Pacific Permanent Commission meeting and the Inter-State Conference in Lima in the final months of 1954. Given the challenges being made by several States to the 1952 Santiago Declaration, the primary purpose of that Convention was for Chile, Ecuador and Peru to assert, particularly against the major maritime powers, their claim of sovereignty and jurisdiction, made jointly in 1952, to a minimum distance of 200 nautical miles from their coasts. It was also designed to help prepare their common defence of the claim against the protests by those States. In the view of the Court, it does not follow, however, that the "primary purpose" was the sole purpose or even less that the primary purpose determined the sole outcome of the 1954 meetings and the Inter-State Conference.

Chile further seeks support from another of the 1954 Agreements, the Agreement relating to Measures of Supervision and Control of the Maritime Zones of the Signatory Countries. The Court, however, concludes that that text gives no indication as to the location or nature of boundaries of the zones.

The Court then turns to the 1954 Special Maritime Frontier Zone Agreement, signed by Chile, Ecuador and Peru, 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 first notes that there is nothing at all in the terms of the said Agreement which would limit it only to the Ecuador-Peru maritime boundary. It further observes that Chile's delay in ratifying that Agreement and submitting it for registration has no bearing on its scope and effect. Once ratified by Chile, the Agreement became binding on it.

Finally, the Court states that, although the operative terms and purpose of the 1954 Special Maritime Frontier Zone Agreement are narrow and specific, that is not the matter under consideration at this stage. Rather, the Court's focus is on one central issue, namely, the existence of a maritime boundary. On that issue, the Court notes that the terms of the 1954 Special Maritime Frontier Zone Agreement, especially Article 1 read together with the preambular paragraphs, are clear: they acknowledge in a binding international agreement that a maritime boundary already exists.

The Court, however, observes that the 1954 Special Maritime Frontier Zone 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. In this connection, the Court recalls, as it already mentioned, that certain elements of the 1947 Proclamations and the 1952 Santiago Declaration suggested an evolving understanding between the Parties concerning their maritime boundary. In an earlier case, the Court, recognizing that "the establishment of a permanent maritime boundary is a matter of grave importance", underlined that "evidence of a tacit legal agreement must be compelling" (Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, I.C.J. Reports 2007 (II), p. 735, para. 253). In the present case, the Court has before it an Agreement which makes clear that the maritime boundary along a parallel already existed between the Parties. The 1954 Agreement is decisive in this respect. That Agreement cements the tacit agreement.

The Court further notes that the 1954 Special Maritime Frontier Zone 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.

The Court then recalls that the Parties also referred, in this context, to an Opinion prepared in 1964 in which Mr. Raúl Bazán Dávila, Head of the Legal Advisory Office of the Chilean Ministry of Foreign Affairs, examined the question whether some specific agreement on maritime delimitation existed between the two States. The Court considers that nothing in the Opinion prepared by Mr. Bazán, in response to a request from the Chilean Boundaries Directorate regarding "the delimitation of the frontier between the Chilean and Peruvian territorial seas", or the fact that such an Opinion was requested in the first place, leads it to alter its conclusion, namely, that by 1954 the Parties acknowledged that there existed an agreed maritime boundary.

4. The 1968-1969 lighthouse arrangements (paras. 96-99)

The Court next examines arrangements the Parties entered into in 1968-1969 to build one lighthouse each, "at the point at which the common border reaches the sea, near boundary marker number one". The Court is of the opinion that the purpose and geographical scope of these arrangements were limited, as indeed the Parties recognize. It further observes that the record of the process leading to the arrangements and the building of the lighthouses does not refer to any pre-existent delimitation agreement. What is important in the Court's view, however, is that the arrangements proceed on the basis that a maritime boundary extending along the parallel beyond 12 nautical miles already exists. Along with the 1954 Special Maritime Frontier Zone Agreement, the arrangements acknowledge that fact. Also, like that Agreement, they do not indicate the extent and nature of that maritime boundary.

5. The nature of the agreed maritime boundary (paras. 100-102)

Having found that the Parties acknowledged the existence of a maritime boundary, the Court must determine its nature, 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. The Court points out that the tacit agreement, which had been acknowledged in the 1954 Special Maritime

Frontier Zone Agreement, must be understood in the context of the 1947 Proclamations and the 1952 Santiago Declaration. It notes that these instruments expressed claims to the sea-bed and to waters above the sea-bed and their resources and that, in this regard, the Parties drew no distinction, at that time or subsequently, between these spaces. The Court therefore concludes that the boundary is an all-purpose one.

6. The extent of the agreed maritime boundary (paras. 103-151)

The Court then comes to the determination of the extent of the agreed maritime boundary. In order to do so, it examines in turn the relevant practice of the Parties in the early and mid-1950s, as well as the wider context, including developments in the law of the sea at that time. It also assesses further elements of practice, for the most part subsequent to 1954.

Starting with fishing potential and activity, the Court recalls that the purpose of the 1954 Special Maritime Frontier Zone Agreement was narrow and specific: it refers to the existing maritime boundary for a particular purpose, namely to establish a zone of tolerance for fishing activity operated by small vessels. Consequently, it must be considered that the maritime boundary whose existence it recognizes, along a parallel, necessarily extends at least to the distance up to which, at the time under review, such activity took place.

In that context, the Court observes that the information referred to by the Parties shows that the species which were being taken in the early 1950s were generally to be found within a range of 60 nautical miles from the coast. 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.

The Court recalls that the purpose of the 1954 Special Maritime Frontier Zone Agreement was to establish a zone of tolerance along the parallel for small fishing boats, which were not sufficiently equipped. 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-maps Nos. 1 and 2), such that, on the Peruvian side, fishing boats departing seaward from Ilo (a port 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.

The Court states that it does not see as of great significance the Parties' knowledge of the likely or possible extent of the marine resources out to 200 nautical miles nor the extent of their fishing in later years. The catch figures indicate that the principal maritime activity in the early 1950s was fishing undertaken by small vessels, such as those specifically mentioned in the 1954 Special Maritime Frontier Zone Agreement and which were also to benefit from the 1968-1969 arrangements relating to the lighthouses.

The Court furthermore recalls 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. Nevertheless, 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 from the specific, regional context to the broader context as it existed in the 1950s, at the time of the acknowledgment by the Parties of the existence of the maritime boundary. That context is provided by the State practice, as well as by related studies in, and proposals coming from, the International Law Commission and reactions by States or groups of

States to those proposals concerning the establishment of maritime zones beyond the territorial sea and the delimitation of those zones. The Court observes that, during the period under consideration, the proposal in respect of the rights of a State over its waters which came nearest to general international acceptance was for a 6-nautical-mile territorial sea with a further fishing zone of 6 nautical miles and some reservation of established fishing rights. As the Court has noted previously, in this period the concept of an exclusive economic zone of 200 nautical miles was "still some long years away" (Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009, p. 87, para. 70), while its general acceptance in practice and in the 1982 United Nations Convention on the Law of the Sea (UNCLOS) was about 30 years into the future. Furthermore, the Court recalls that, in answering a question from a Member of the Court, both Parties recognized that their claim made in the 1952 Santiago Declaration did not correspond to the international law of that time and was not enforceable against third parties, at least not initially.

On the basis of the fishing activities of the Parties at that time, 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, the Court considers 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 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. The Court first turns to the legislative practice of the Parties before examining the 1955 Protocol of Accession to the 1952 Santiago Declaration and enforcement activities, concerning vessels of third States as well as involving Peru and Chile. The Court then analyses the 1968-1969 lighthouse arrangements and the record of the negotiations entered into by Chile with Bolivia in 1975-1976 regarding a proposed exchange of territory that would provide Bolivia with a "corridor to the sea" and an adjacent maritime zone. The Court also considers the positions of the Parties at the Third United Nations Conference on the Law of the Sea, a memorandum sent by Peruvian Ambassador Bákula to the Chilean Ministry of Foreign Affairs on 23 May 1986 — calling for "the formal and definitive delimitation of the marine spaces" — and the Parties' practice after 1986.

The Court finds that the elements which it has reviewed do not lead it to change its earlier tentative conclusion. 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.

V. THE STARTING-POINT OF THE AGREED MARITIME BOUNDARY (paras. 152-176)

Having concluded that there exists a maritime boundary between the Parties, the Court must identify the location of the starting-point of that boundary. It recalls that both Parties agree that the land boundary between them was settled and delimited more than 80 years ago in accordance with Article 2 of the 1929 Treaty of Lima, which specifies that "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". The Court further recalls that, in accordance with Article 3 of the 1929 Treaty of Lima, the boundary was demarcated by a Mixed Commission, the first marker along the physical demarcation of the land boundary being Boundary Marker No. 1. The Parties, however, disagree on the exact location of Point Concordia. While Peru maintains that Boundary Marker No. 1 was not intended to mark the start of the agreed land boundary, Chile claims this marker is the starting-point of the land boundary. In this regard, the Court observes that a considerable number of the arguments presented by the Parties concern an issue which is clearly not before it, namely, the location of the starting-point of the land boundary identified as "Concordia" in Article 2 of the 1929 Treaty of Lima. It recalls that its task is to ascertain whether

the Parties have agreed to any starting-point of their maritime boundary and that its jurisdiction to deal with the issue of the maritime boundary is not contested.

In order to determine the starting-point of the maritime boundary, the Court considers the record of the process leading to the 1968-1969 lighthouse arrangements and certain cartographic evidence presented by the Parties, as well as evidence submitted in relation to fishing and other maritime practice in the region. Considering that the two latter elements are not relevant to the issue, the Court focuses on the 1968-1969 lighthouse arrangements. It is of the view that the maritime boundary which the Parties intended to signal with the lighthouse arrangements was constituted by the parallel passing through Boundary Marker No. 1 and notes that both Parties subsequently built the lighthouses as agreed, thus signalling the parallel passing through Boundary Marker No. 1. The 1968-1969 lighthouse arrangements therefore serve as compelling evidence that the agreed maritime boundary follows the parallel that passes through Boundary Marker No. 1.

Pointing out that it is not called upon to take a position as to the location of Point Concordia, where the land frontier between the Parties starts, the Court notes that it could be possible for the aforementioned point not to coincide with the starting-point of the maritime boundary, as it was just defined. The Court observes, however, that such a situation would be the consequence of the agreements reached between the Parties.

The Court 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.

VI. THE COURSE OF THE MARITIME BOUNDARY FROM POINT A (paras. 177-195)

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 (to Point A), the Court turns to the determination of the course of the maritime boundary from that point on.

The Court proceeds on the basis of the provisions of Articles 74, paragraph 1, and 83, paragraph 1, of UNCLOS which, as it has recognized, reflect customary international law (Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001, p. 91, para. 167; Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012 (II), p. 674, para. 139). The texts of these provisions are identical, the only difference being that Article 74 refers to the exclusive economic zone and Article 83 to the continental shelf. They read as follows:

> "The delimitation of the exclusive economic zone [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."

The Court recalls that the methodology which it usually employs in seeking an equitable solution involves three stages. In the first, it 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 (Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009, pp. 101-103, paras. 115-122; Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012 (II), pp. 695-696, paras. 190-193).

In the present case, the delimitation of the maritime area must begin at the endpoint of the agreed maritime boundary which the Court has determined is 80 nautical miles long (Point A). Referring to its case law, the Court explains that, in practice, a number of delimitations begin not at the low-water line but at a point further seaward, as a result of a pre-existing agreement between the parties. The situation the Court faces here is, however, unusual in that the starting-point for the delimitation in this case is much further from the coast: 80 nautical miles from the closest point on the Chilean coast and about 45 nautical miles from the closest point on the Peruvian coast.

The Court then proceeds with the first step of its usual methodology and constructs a provisional equidistance line which starts at the endpoint of the existing maritime boundary (Point A). In order to construct such a line, the Court first selects appropriate base points. In view of the location of Point A at a distance of 80 nautical miles from the coast along the parallel, the nearest initial base point on the Chilean coast is situated near the starting-point of the maritime boundary between Chile and Peru, and on the Peruvian coast at a point where the arc of a circle with an 80-nautical-mile radius from Point A intersects with the Peruvian coast. For the purpose of constructing a provisional equidistance line, only those points on the Peruvian coast which are more than 80 nautical miles from Point A can be matched with points at an equivalent distance on the Chilean coast. The arc of a circle indicated on sketch-map No. 3 is used to identify the first Peruvian base point. Further base points for the construction of the provisional equidistance line have been selected as the most seaward coastal points "situated nearest to the area to be delimited" (Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009, p. 101, para. 117). These base points are situated to the north-west of the initial base point on the Peruvian coast and south of the initial base point on the Chilean coast. No points on the Peruvian coast which lie to the south-east of that initial point on that coast can be matched with points on the Chilean coast, as they are all situated less than 80 nautical miles from Point A (see sketch-map No. 3: Construction of the provisional equidistance line).

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 the 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). Chile in response contends that the 1952 Santiago Declaration establishes a single lateral limit for all maritime areas of its States parties whether actual or prospective, invoking the reference in paragraph II of the Declaration to "a minimum distance of 200 nautical miles". Since the Court has already concluded that the agreed boundary line along the parallel of latitude ends at 80 nautical miles from the coast, the foundation for the Chilean argument does not exist. Moreover, since the Court has decided that 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 and the Court need not rule on it.

Resuming the application of its usual methodology, the Court recalls that, seaward of Point B, the 200-nautical-mile limits of the Parties' maritime entitlements delimited on the basis of equidistance no longer overlap. It 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 from Point B to Point C, where the 200-nautical-mile limits of the Parties' maritime entitlements intersect.

The Court must then determine, at the second stage of its usual methodology, whether there are any relevant circumstances calling for an adjustment of the provisional equidistance line, with the purpose, it must always be recalled, of achieving an equitable result. In the present case, the

equidistance line avoids any excessive amputation of either State's maritime projections and no relevant circumstances appear in the record before the Court. There is accordingly no basis for adjusting the provisional equidistance line.

The next and third step is to determine whether the provisional equidistance line drawn from Point A produces a result which is significantly disproportionate in terms of the lengths of the relevant coasts and the division of the relevant area. The purpose is to assess the equitable nature of the result.

As the Court noted earlier, the existence of an agreed line running for 80 nautical miles along the parallel of latitude presents it with an unusual situation. The existence of that line would make difficult, if not impossible, the calculation of the length of the relevant coasts and of the extent of the relevant area, were the usual mathematical calculation of the proportions to be undertaken. The Court recalls that in some instances in the past, because of the practical difficulties arising from the particular circumstances of the case, it has not undertaken that calculation. It more recently observed that, in this final phase of the delimitation process, the calculation does not purport to be precise and is approximate; "[t]he object of delimitation is to achieve a delimitation that is equitable, not an equal apportionment of maritime areas" (Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009, p. 100, para. 111). In such cases, the Court engages in a broad assessment of disproportionality. Given the unusual circumstances of the present case, the Court follows the same approach here and concludes that no significant disproportion is evident, such as would call into question the equitable nature of the provisional equidistance line.

The Court accordingly concludes that the maritime boundary between the two Parties from Point A runs along the equidistance line to Point B, and then along the 200-nautical-mile limit measured from the Chilean baselines to Point C (see sketch-map No. 4: Course of the maritime boundary).

VII. CONCLUSION (paras. 196-197)

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. Moreover, the Court has not been asked to do so in the Parties' final submissions. The Court expects that the Parties will determine these co-ordinates in accordance with the Judgment, in the spirit of good neighbourliness.

VIII. OPERATIVE CLAUSE (para. 198)

THE COURT,

(1) By fifteen votes to one,

Decides 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;

IN FAVOUR: President Tomka; Vice-President Sepúlveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Xue, Donoghue, Sebutinde, Bhandari; Judges ad hoc Guillaume, Orrego Vicuña;

AGAINST: Judge Gaja;

(2) By fifteen votes to one,

Decides that the initial segment of the single maritime boundary follows the parallel of latitude passing through Boundary Marker No. 1 westward;

IN FAVOUR: President Tomka; Vice-President Sepúlveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Xue, Donoghue, Gaja, Bhandari; Judges ad hoc Guillaume, Orrego Vicuña;

AGAINST: Judge Sebutinde;

(3) By ten votes to six,

Decides 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;

IN FAVOUR: Vice-President Sepúlveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Donoghue; Judge ad hoc Guillaume;

AGAINST: President Tomka; Judges Xue, Gaja, Sebutinde, Bhandari; Judge ad hoc Orrego Vicuña;

(4) By ten votes to six,

Decides 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;

IN FAVOUR: Vice-President Sepúlveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Donoghue; Judge ad hoc Guillaume;

AGAINST: President Tomka; Judges Xue, Gaja, Sebutinde, Bhandari; Judge ad hoc Orrego Vicuña;

(5) By fifteen votes to one,

Decides that, for the reasons given in paragraph 189 [of the same Judgment], it does not need to rule on the second final submission of the Republic of Peru.

IN FAVOUR: President Tomka; Vice-President Sepúlveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Xue, Donoghue, Gaja, Sebutinde, Bhandari; Judge ad hoc Guillaume;

AGAINST: Judge ad hoc Orrego Vicuña.

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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Declaration of President Tomka

President Tomka concurs with the Court's finding that the single maritime boundary between Peru and Chile starts at the intersection of the parallel of latitude passing through Boundary Marker No. 1 with the low-water line. He also agrees that the single maritime boundary follows that parallel of latitude. However, he parts company with his ten colleagues when they decided that this agreed boundary stops at a distance of 80 nautical miles from its starting-point. Consequently, he is unable to support the Court's drawing of the maritime boundary de novo from that point onwards.

President Tomka begins by noting that in the 1954 Agreement Relating to a Special Maritime Frontier Zone, the Parties did not establish the maritime boundary between them but clearly recognized that such boundary had already existed. He does not regard the Parties' practice under that Agreement as relevant in determining the extent of the maritime boundary, and considers that that boundary extends to a distance corresponding to that which the Parties maintained in their claims to maritime zones, namely 200 nautical miles. The Court's Judgment closes the special maritime zone established under the 1954 Agreement at a distance of 80 nautical miles from the coast. However, while the Parties set the eastern, southern and northern limits on this zone, they deliberately chose not to set a western limit. He concludes that this zone was intended to extend seaward along the parallel up to the limit of the Parties' claimed maritime entitlements.

President Tomka considers that the text and negotiating history of the 1952 Santiago Declaration, as well as the domestic acts of the Parties in formulating their maritime claims, support the conclusion that the agreed maritime boundary extended to 200 nautical miles. Moreover, he considers that one can conclude from discussions during the 1954 Lima Conference that the Parties agreed to confirm that the 1952 Declaration was adopted on the understanding that the parallel beginning where their land frontier reaches the sea constituted the line dividing their claimed maritime zones. The drafting and travaux préparatoires of the 1954 Agreement on a Special Zone support the existence of this maritime boundary, while the 1955 Supreme Resolution of Peru also implies that the boundary line would follow the parallel.

In conclusion, President Tomka is of the view that the Parties considered that the 1952 Declaration settled issues relating to the delimitation of their maritime zones. He regards the Declaration not as the actual legal source of that settlement, but as evidence of the recognition of such settlement by the Parties. While the Declaration did not expressly establish the parallel as the maritime boundary between the Parties, President Tomka considers that the Minutes of the 1954 Lima Conference and the resulting Agreement on a Special Zone are to be taken into account in its interpretation. Paragraph IV of the Declaration assumes the existence of a general maritime frontier, and the Parties seem to have regarded this issue as uncontroversial. Importantly, officials of the Parties agreed and declared that the issue of the lateral delimitation of their declared 200-nautical-mile zones was settled and the 1954 Agreement on a Special Zone confirms the existence of the boundary along the parallel.

President Tomka goes on to note that, in his view, some of the evidence referred to by the Court, particularly pertaining to the Humboldt Current, points to the boundary extending well beyond a distance of 80 nautical miles.

In disagreeing with the Court's finding that the agreed boundary stops at a distance of 80 nautical miles from its starting-point at the coast, and consequently with the conclusions as to the boundary's continuation from that point, President Tomka makes clear that he does not take

issue with the methodology employed by the Court in constructing the continuation of the boundary line, but rather with the distance at which that boundary departs from the parallel.

Finally, President Tomka, noting that the Court's decision is to be respected, agrees that the Court need not rule on Peru's submission concerning the "outer triangle", this area being part of Peru's exclusive economic zone and continental shelf. In his view, this would have been the result even if the agreed maritime boundary had extended to a distance of 200 nautical miles from the coast.

Declaration of Vice-President Sepúlveda-Amor

In his declaration, Vice-President Sepúlveda-Amor expresses serious reservations with regard to the Court's reasoning in support of the existence of a tacit agreement on maritime delimitation.

Vice-President Sepúlveda-Amor accepts that, in appropriate circumstances, a maritime boundary may be grounded upon tacit agreement. He rejects, however, that the 1954 Special Maritime Frontier Zone Agreement (1954 Agreement) proves the existence of such an agreement in compelling terms.

To Vice-President Sepúlveda-Amor, the inquiry into the possible existence of a tacit agreement on maritime delimitation should have led the Court to undertake a systematic and rigorous analysis of the Parties' conduct well beyond the terms of the 1954 Agreement, for it is only through the scrutiny of years of State practice that an agreed maritime boundary may be discerned. Instead — he regrets — the analysis of State conduct remains underdeveloped and peripheral to the Court's arguments when it should be at the centre of its reasoning.

He fears the approach adopted by the Court may be interpreted as a retreat from the stringent standard of proof formulated in the case Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras) for the establishment of a permanent maritime boundary.

This is not, however, how the Judgment should be read, as it is not predicated upon a departure from the Court's previous jurisprudence.

Separate opinion of Judge Owada

In his separate opinion, Judge Owada states that, although he has accepted the conclusions contained in the operative paragraphs of the Judgment, he has not been able to associate himself fully with the reasoning which has led the Court to its conclusion regarding the concrete delimitation of the single maritime boundary between Peru and Chile.

Judge Owada endorses the Judgment's rejection of Chile's position that the respective maritime zone entitlements of Chile and Peru have been fully delimited by agreement, and further supports the Judgment's rejection of Peru's position that the maritime zones between Chile and Peru have never been delimited by agreement or otherwise. Judge Owada states, however, that he has serious reservations with the finding of the Court that the 1954 Agreement Relating to a Special Maritime Frontier Zone ("1954 Agreement") demonstrates that the Parties acknowledged the existence of an agreement between them delimiting the zones of their respective maritime entitlements along the parallel of latitude passing through Boundary Marker No. 1. In Judge Owada's view, to reach this conclusion the Judgment has to establish (1) that there has been some new legal fact (acts/omissions) on the part of the Parties that legally created such an agreement, and (2) that this boundary extends only to a distance of 80 nautical miles, beyond which

there does not exist any delimited maritime boundary accepted by the Parties. Judge Owada submits that the present Judgment does not seem to have substantiated these points with sufficiently convincing supporting evidence.

Judge Owada disagrees with the Judgment's conclusion that the language of the 1954 Agreement is "clear" in acknowledging that a maritime boundary already exists. Judge Owada fails to see how the provisions of the 1954 Agreement can be said to be so "clear" as to justify this conclusion. Judge Owada notes that the crucial words in Article 1 of the 1954 Agreement state that "[a] special zone is hereby established . . . extending to a breadth of 10 nautical miles on either side of the parallel which constitutes the maritime boundary between the two countries" (emphasis added). Judge Owada states that this language, in its plain meaning, does not, as such and without additional evidence, warrant the existence of a tacit agreement establishing such a boundary for all purposes between the Parties. Judge Owada recalls that the Court has previously stated in the Territorial and Maritime Dispute (Nicaragua v. Colombia) case that "[e]vidence of a tacit legal agreement must be compelling. The establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed." (Emphasis added.) It is Judge Owada's view that this stringent standard is not met in the present case.

Turning to the travaux préparatoires of the 1954 Agreement, Judge Owada notes that the 1954 Agreement had its origin in a paper jointly submitted by the delegates of Ecuador and Peru which referred to the creation of a neutral zone on either side of "the parallel which passes through the point of the coast that signals the boundary between the two countries" (emphasis added). Judge Owada states that this language suggests what the drafters were indicating was the land boundary between the countries concerned. Judge Owada further notes that the language was amended to its present form upon the urging of the Ecuadorian delegate to the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, who proposed that "the concept already declared in Santiago that the parallel starting at the boundary point on the coast constitutes the maritime boundary between the neighbouring signatory countries, [be] incorporated into this article". According to Judge Owada, this indicates that the language of Article 1 of the 1954 Agreement was drafted reflecting the perception of the delegate of Ecuador that what he was proposing was no more than what had already been "declared in Santiago" in 1952. Judge Owada points out, however, that as the Judgment correctly concluded, the 1952 Santiago Declaration had not declared that the parallel starting at the boundary point on the coast constituted a maritime boundary.

Judge Owada adds that the 1968-1969 lighthouses arrangements similarly do not provide "compelling" evidence of the existence of a tacit agreement establishing an all-purpose maritime boundary. According to Judge Owada, these arrangements are no more than a logical follow-up of the 1954 Agreement, and add nothing more (or less) to what the 1954 Agreement prescribes (or does not prescribe) about the nature of the parallel as a line of maritime demarcation.

Consequently, Judge Owada states that, in his view, the Judgment has failed to show that a tacit agreement between the Parties on an all-purpose maritime boundary extending along the parallel came to exist on the basis of some legal acts or omissions of the Parties subsequent to the 1952 Santiago Declaration, but prior to the 1954 Agreement.

Judge Owada also raises the question of how far the alleged maritime boundary should extend. He notes that if, as the Judgment assumes, the Parties had come to accept the parallel of latitude as the definitive maritime boundary line for all purposes, then there should be no reason to think that this line should terminate at a distance of 80 nautical miles from the starting-point, rather than extending to the maximum of 200 nautical miles. Judge Owada points out that the Judgment acknowledges 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".

If, on the contrary, one starts from the premise that this boundary should stop at some point less than 200 nautical miles for the reason that the real situation on the ground relating to the actual fishing activities extended only to a certain point, then, Judge Owada argues, the rationale for relying upon that distance has to be based on the legal nature of the line not as an all-purpose maritime boundary, but rather as a line for the specific purposes of creating the regulatory régime for fisheries. According to Judge Owada, the Judgment cannot escape this dilemma created by its own reasoning, as long as the Judgment is based on the presumed (but not proven) existence of a tacit agreement on the permanent maritime boundary.

Judge Owada writes that instead of basing its reasoning for the existence of a line of demarcation on the acknowledgment of a tacit agreement on a maritime boundary of an all-purpose nature, the Judgment should base itself on a slightly modified legal reasoning along the following lines:

(1) The Court should reject, as the present Judgment does, Chile's contention that the 1952 Santiago Agreement constitutes an agreement to recognize and accept a maritime boundary line along the parallel of latitude.

(2) The practice of the States involved in the field of exercising national jurisdiction in the sea, in particular, relating to the fishing activities of Chile and Peru in the region, which gradually emerged in the years through the Santiago Declaration and beyond, as reflected in the 1954 Agreement and the 1968-1969 lighthouses arrangements, demonstrates the gradual emergence of a tacit understanding among the Parties to accept some jurisdictional delimitation of the area of national competence in the sea along the line of latitude, especially for the purposes of the regulation of fisheries. This acceptance of the zoning of maritime areas developed de facto specifically in the lateral direction to enclose sea areas belonging to each of the Parties for the purposes of fishing activities. The process of this tacit acceptance through State practice developed apparently without taking the form of an agreement, tacit or express, between the Parties, and came to be reflected in the form of a de facto delimitation of the maritime boundary along the coasts of Peru and Chile.

(3) It is not possible nor necessary to pinpoint when and how this tacit acceptance crystallized into a normative rule that the Parties came to recognize as constituting the legal delimitation of their respective zones of maritime entitlement.

(4) The 1954 Agreement thus cannot be considered an agreement which de novo created a new maritime zone boundary, nor did the 1954 Agreement purport to acknowledge an existing tacit agreement for the maritime zone delimitation that would have definitively defined the limits of the Parties' maritime jurisdiction for all purposes.

(5) The 1954 Agreement nonetheless has had an important legal significance in the process of consolidating the legal title based on tacit acceptance through practice.

(6) Because the tacit acceptance was based in its origin on State practice at that time, it is thus limited to the extent of the actual fishing activities conducted by the coastal fishermen of the two States involved. The precise distance out to sea to which the sea area belonging to the two States was delimited between them has to be determined primarily in light of these fishing activities. Taking into account the predominant pattern of fishing activities by Peru and Chile in the relevant period, the reasonable geographic limit in which such activities could be presumed to have been in operation would seem to be within the distance of 50 nautical miles from the respective coasts of Peru and Chile. When the distance from the coast is translated into the length of the line of parallel of latitude, this line corresponds to roughly 80 nautical miles from the point where the land boundary between Peru and Chile meets the sea.

Judge Owada is therefore prepared to accept the figure of 80 nautical miles as the length of the parallel line to be drawn from the starting-point where the land boundary between the two countries reaches the sea as most faithfully reflecting the reality of State practice as primarily reflected in the fishing activities of the region in those days.

Judge Owada adds that, on the basis of this analysis, the argument based on the consideration of equitable allocation of the entire sea area in dispute between the two contending States should have no place in the Court's consideration of the problem of how far this line of parallel of latitude should extend.

Declaration of Judge Skotnikov

Judge Skotnikov has voted in favour of the Court's conclusions set forth in the operative clause. However, he does not agree with the Court's treatment of the issue of the extent of the maritime boundary between Peru and Chile.

Judge Skotnikov supports the Court's conclusion that, prior to the signing of the 1954 Special Maritime Frontier Zone Agreement, there was a tacit agreement between the Parties concerning a maritime boundary between them along the parallel running through the point at which their land frontier reaches the sea. He agrees that the 1954 Special Maritime Frontier Zone Agreement, which acknowledged the existence of the tacit agreement, did leave some uncertainty as to the precise extent of the maritime boundary. In his opinion, the Court could have dealt with this in the same manner that it resolved the issue of whether the maritime boundary is all-purpose in nature, namely, within the context of the 1947 Proclamations and the 1952 Santiago Declaration. Judge Skotnikov regrets that the Court has instead considered the issue of the extent of the maritime boundary outside this context.

Judge Skotnikov is unconvinced by the Court's argument that the state of general international acceptance concerning a State's maritime entitlements during the 1950s indicates that the Parties were unlikely to have established their maritime boundary running to a distance of 200 nautical miles. He notes that the 1947 Proclamations and the 1952 Santiago Declaration demonstrate that the Parties were willing to make maritime claims which did not enjoy widespread contemporaneous international acceptance.

Judge Skotnikov is equally unconvinced by the Court's treatment of the various practices, such as fisheries and enforcement activities, as largely determinative of the extent of the agreed maritime boundary. He fails to see how the extent of an all-purpose maritime boundary can be determined by the Parties' extractive and enforcement capacity at the time of the signing of the 1954 Agreement, which merely acknowledged the existing maritime boundary.

Even if one follows the line of reasoning adopted by the Court, Judge Skotnikov points out that the determination of the figure of 80 nautical miles as the extent of the agreed maritime boundary does not seem to be supported by the evidence which the Court finds relevant. Some such evidence supports an agreed maritime boundary of at least 100 nautical miles.

However, Judge Skotnikov concludes that given that the Parties' treatment of the extent of the agreed maritime boundary lacks the clarity which would have been expected, it has been possible for him to join the majority in voting in favour of the third operative paragraph.

Joint dissenting opinion of Judges Xue, Gaja, Bhandari and Judge ad hoc Orrego Vicuña

In their joint dissenting opinion, Judges Xue, Gaja, Bhandari and Judge ad hoc Orrego Vicuña take the view that the text of paragraph IV of the 1952 Declaration on the Maritime

Zone (the Santiago Declaration) implies that the parallel that passes through the point where the land frontier reaches the sea represents the lateral boundary between the maritime zones of the Parties generated by their continental coasts. On the basis of the Parties' maritime claims as stated in the Santiago Declaration, this boundary extends to 200 nautical miles. Some subsequent agreements concluded between the Parties confirm this interpretation of the Santiago Declaration, in particular the 1954 Agreement relating to a Special Maritime Frontier Zone (the 1954 Agreement), the 1955 Protocol of Accession to the Declaration on "Maritime Zone" of Santiago (the 1955 Protocol) and the 1968 agreement on the installation of lighthouses between Peru and Chile (the 1968 agreement).

The four judges first point out that the Santiago Declaration is a treaty and that it has been accepted as such by the parties. Paragraph IV of the Declaration states:

> "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. 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, 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."

The judges observe that under paragraph IV the criterion for delimiting one general maritime zone from another such zone has not been explicitly set forth. However, when paragraph IV refers to an island or a group of islands at a distance less than 200 nautical miles from the general maritime zone of another State, it implies that some criterion has also been adopted for delimiting that general maritime zone, because it would otherwise be impossible to know whether an island or a group of islands is situated at less than 200 nautical miles from that zone.

Recalling the fundamental rule of treaty interpretation that every term of a treaty should be given meaning and effect in light of the object and purpose of the treaty, the judges underscore that the phrases in this paragraph referring to "the general maritime zone belonging to another of those countries" and determining that the maritime zone of islands "shall be limited by the parallel at the point at which the land frontier of the States concerned reaches the sea" have a direct bearing on the islands' entitlement as well as on the lateral boundaries between the general maritime zones of the parties.

The judges also find support for their conclusion in the minutes of the Juridical Affairs Committee of the Santiago Conference, which record the understanding of the parties to the Santiago Declaration that the respective parallel from the point at which the borders of the countries touches or reaches the sea would mark the lateral boundary between the general maritime zones of the three States.

Moreover, in their opinion, given that the parties publicly proclaimed that they each possessed exclusive sovereignty and jurisdiction over the sea along the continental coasts of their respective countries to a minimum distance of 200 nautical miles from their coasts, and that they provided explicitly in the Santiago Declaration that the islands off their coasts would be entitled to 200 nautical mile maritime zones, it is unpersuasive to draw the conclusion that they could have reached a tacit agreement that their maritime boundary from the coast would only run for 80 nautical miles, which is clearly contrary to their position as stated in the Santiago Declaration.

As regards Peru's argument that its relevant maritime zone was defined on the basis of the "arcs-of-circles" method, the judges review the domestic laws promulgated by the Parties around the time of the Santiago Conference, and conclude that both States arguably employed the method of "tracé parallèle" in determining the scope of their respective general maritime zones. They further point out that even supposing that Peru indeed had the arcs-of-circles method in mind at that time, it would immediately have faced the situation of an overlap between its claim and that of

Chile concerning their general maritime zones. There is however no single document in the records before the Court showing that this issue was envisaged at the Santiago Conference. In view of all the evidence, the judges observe that Peru did not raise the issue until 1986 and gave expression to the arcs-of-circles method only in its Law on Baselines of 2005.

The judges acknowledge that in 1952 the issue of delimitation between the adjacent States was not given as much attention as the assertion of their 200 nautical mile position towards those States which were hostile to such claims, and that when Peru signed the Santiago Declaration, it could not foresee that the subsequent development of the law of the sea would render the tracé parallèle method unfavourable to itself. That issue, however, is a separate matter. They emphasize that what the Court has to decide in this case is whether or not Peru and Chile reached in the Santiago Declaration an agreement on their maritime boundary. The judges further note that while the claims of the parties to the Santiago Declaration for a 200-nautical-mile maritime zone could hardly find a basis in customary international law at the time they were made, a delimitation could be agreed by the three States even with regard to their potential entitlements. This was arguably done by the Santiago Declaration.

With regard to the subsequent agreements, the judges first refer to the 1954 Agreement, which constitutes an integral and supplementary part of the Santiago Declaration. Under the 1954 Agreement, the parties established a special zone of tolerance on each side of the maritime frontier between the adjacent States in which innocent and inadvertent trespasses by small fishing boats would not be penalized.

In the view of the judges, in order to establish such a tolerance zone, the existence of a maritime boundary between the parties was a prerequisite. In identifying the maritime frontier between the parties, paragraph 1 of the 1954 Agreement explicitly refers to "the parallel which constitutes the maritime boundary between the two countries". The definite article "the" before the word "parallel" indicates a pre-existing line as agreed on by the parties. The only relevant agreement on their maritime zones that existed between the parties before 1954 was the Santiago Declaration. Given the context of the 1954 Agreement, the parallel referred to can be no other line than that running through the endpoint of the land boundary, i.e., the parallel identified in the Santiago Declaration.

The judges observe that the 1954 Agreement has a rather limited purpose, only targeting innocent and inadvertent incidents caused by small vessels. It does not provide where, and with regard to what kind of fishing activities, larger vessels of each State party should operate. Logically, ships other than the small boats referred to in the Agreement could fish well beyond the special zone. Moreover, the parties' enforcement activities were not in any way confined by the tolerance zone. In the context of the Santiago Declaration, by no means could the parties to the 1954 Agreement have intended to use the fishing activities of small vessels as a pertinent factor for the determination of the extent of their maritime boundary. Should that have been the case, it would have seriously restrained the potential catching capacity of the parties to the detriment of their efforts to preserve fishing resources within 200 nautical miles, thus contradicting the very object and purpose of the Santiago Declaration.

Consequently, the judges find that, given the object and purpose of the 1954 Agreement, it is rather questionable for the majority of the Court to construe the 1954 Agreement as limiting the maritime boundary to the extent of the inshore fishing activities as of 1954 (assumed to be 80 nautical miles). In their opinion, the 1954 Agreement indicates that the parties had not only delimited the lateral boundary of their maritime zones which extends to 200 nautical miles, but also intended to maintain it. In establishing the special zone, each party committed itself to observe the lateral boundary, which was only confirmed rather than determined by the parties in the 1954 Agreement.

Secondly, the judges consider the 1955 Protocol. They note that when the Santiago Declaration was opened to other Latin-American States for accession, the parties reiterated in the Protocol the basic principles of the Santiago Declaration, but omitted paragraph IV of the Santiago Declaration. In their opinion, the content of the Protocol shows that at the time of the conclusion of the Santiago Declaration, notwithstanding their primary concern with their 200-nautical-mile maritime claims, the parties did have the issue of maritime delimitation in mind, albeit as a less significant question. It also illustrates that the parties did not envisage any general rule applicable to delimitation and that paragraph IV was a context-specific clause, applicable only to the parties to the Santiago Declaration. The judges add that, as a legal instrument adopted by the parties subsequent to the 1954 Agreement, even if it did not enter into force, this Protocol offers an important piece of evidence that disproves any tacit agreement between Peru and Chile that their maritime boundary would run only up to 80 rather than 200 nautical miles along the parallel passing through the point where the land frontier meets the sea.

Finally, the judges turn to the 1968 agreement, according to which Peru and Chile agreed to install two lighthouses at the seashore so as "to materialise the parallel of the maritime frontier originating at Boundary Marker number one (No. 1)". The judges are of the view that the installation of the two lighthouses was apparently designed to enforce the maritime delimitation between the Parties. Even if done for a limited purpose, such activity further confirms that the parallel at the point at which the land frontier of the States concerned reaches the sea constitutes the lateral boundary between Peru and Chile. The judges take the view that consistent with the Parties' position taken at Santiago, the boundary as materialized by the lighthouses should run for 200 nautical miles.

Declaration of Judge Donoghue

In a declaration, Judge Donoghue notes that neither Party's pleaded case convinced the Court. Instead, the Court concluded that there is "compelling evidence" of tacit agreement to a maritime boundary running along the parallel that crosses Boundary Marker No. 1, meeting the standard that the Court has previously articulated in Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea. Judge Donoghue observes, however, that the Parties did not address the existence or terms of such an agreement, and did not present evidence focused specifically on the extent of such a boundary. Nor did either Party address the possibility that the initial segment of the maritime boundary had been settled by agreement of the Parties, leaving the remainder of the boundary to be delimited on the basis of customary international law. The Court thus addressed these issues without the benefit of the Parties' views. The case serves as a reminder of procedural approaches that may offer advantages when important issues have not been squarely addressed by the parties, such as asking the parties for additional legal briefing or evidence, or rendering an interim or partial decision.

Declaration of Judge Gaja

As explained in the joint dissenting opinion, the maritime delimitation between Chile and Peru according to the Santiago Declaration follows the parallel running through the point where the land frontier reaches the sea. Article 2 of the 1929 Treaty of Lima fixes as the starting-point of the land frontier a point on the coast which is situated 10 km to the north of the bridge over the river Lluta. In 1930 the bilateral Mixed Commission competent for demarcation was given instructions to trace an arc with a radius of 10 km from that bridge and to take as the starting-point of the land frontier the intersection of that arc with the seashore. Although for practical reasons the Parties have later used a marker placed near that point for the purpose of identifying their maritime boundary, there is no evidence that they ever reached an agreement for adopting a starting-point other than the one referred to in the Santiago Declaration.

Dissenting opinion of Judge Sebutinde

In her dissenting opinion, Judge Sebutinde expresses her disagreement with the Court's findings relating to the merits of the dispute as contained in points 2, 3 and 4 of the operative paragraph of the Judgment. In particular, Judge Sebutinde takes issue on the Court's conclusion that an all-purpose maritime boundary already exists between the Parties along the parallel of latitude passing through the Boundary Marker No. 1 on the basis of a tacit agreement between the Parties. In her view, this conclusion is not in line with the stringent standard of proof which the Court itself set in the Nicaragua v. Honduras case for establishing a permanent maritime boundary in international law on the basis of a tacit agreement. In particular, Judge Sebutinde does not find the evidence, from which the Court infers the tacit agreement between the Parties, "compelling". Rather, she considers that the evidence before the Court does not enable a firm conclusion that it was the intention of the Parties under the 1952 Santiago Declaration or the 1954 Agreement to establish such a boundary.

In this regard, Judge Sebutinde notes that the practice of the Parties (contemporaneous with and subsequent to the 1952/1954 agreements) indicates that their intention at the time of the conclusion of the 1952/1954 agreements was to regulate the sharing of a common resource and to protect that resource vis-à-vis third or non-States parties, rather than to effect a maritime delimitation. Acknowledging that certain documents and/or events that were considered by the Court may be said to reflect some degree of the Parties' shared understanding that there was a "maritime boundary" in place between them along the parallel of latitude, Judge Sebutinde notes that there are other that could equally be said to demonstrate the absence of such an agreement. Besides, even those potentially "confirmatory" examples do not unambiguously prove that the Parties were acting (or failing to act) on an assumption that this line constituted an all-purpose and definitive maritime boundary delimiting all possible maritime entitlements of the Parties.

In the same vein, Judge Sebutinde considers that the evidence submitted by the parties does not support the Court's conclusion that the "agreed maritime boundary running along the parallel of latitude" extends up to a distance of 80 nautical miles out to sea.

Accordingly, Judge Sebutinde considers that the Court should have determined the entirety of the single maritime boundary line between the Parties de novo, by applying its well-established three-step delimitation method in order to achieve an equitable result.

Declaration of Judge ad hoc Guillaume

1. Judge ad hoc Guillaume agrees with the Court's decision and shares the approach which it has adopted. He observes in particular that Chile has failed to show that the boundary deriving from the tacit agreement between the Parties extended beyond 60 to 80 nautical miles from the coasts. In Judge ad hoc Guillaume's view, the latter figure marks the extreme limit of the boundary under the agreement, and it is in those circumstances that he is able to subscribe to paragraph 3 of the Judgment's operative part.

2. Judge ad hoc Guillaume further explains that he has also accepted the solution adopted by the Court as regards the starting-point of the maritime boundary. He points out that this solution necessarily follows from the language of the arrangements of 1968-1969. He adds, however, that it in no way prejudges "the location of the starting-point of the land boundary identified as 'Concordia' in Article 2 of the 1929 Treaty of Lima", which it is not for the Court to determine (Judgment, paragraph 163). The Parties disagree on the location of that point, and for his part Judge ad hoc Guillaume tends to believe that it is located not at boundary marker No. 1, which is located inland, but at "the point of intersection between the Pacific Ocean and an arc with a radius of 10 km having its centre on the bridge over the river Lluta" (see the Parties' "Joint Instructions"

of April 1930, Judgment, paragraph 154). Accordingly, the coast between the starting-point of the maritime boundary and Point Concordia falls under the sovereignty of Peru, whilst the sea belongs to Chile. However, that situation is not unprecedented, as Chile pointed out at the hearings (CR 2012/31, pp. 35-38); it concerns just a few tens of metres of shoreline, and it may be hoped that it will not give rise to any difficulties.

Separate, partly concurring and partly dissenting, opinion of Judge ad hoc Orrego Vicuña

Judge ad hoc Orrego Vicuña submits, in addition to the joint dissent with Judges Xue, Gaja and Bhandari, a separate opinion, which in part explains those aspects of the Judgment with which he concurs, and in part notes those matters from which he dissents. Among the former there is, first, the starting-point of maritime delimitation, established at the point where the parallel that passes through Boundary Marker No. 1 intersects with the low-water line. Equal importance is attached to the recognition of the parallel as a criterion for effecting the maritime delimitation to a certain extent. The concurring view of Judge ad hoc Orrego Vicuña also notes the importance of recognizing the existence of a single maritime boundary, and assigns special significance to the fact that the Court notes Peru's statement to the effect that its Maritime Domain is applied in a manner consistent with the 1982 United Nations Convention on the Law of the Sea. As a consequence of this statement, ships flying the flags of all nations shall now have complete freedom of navigation and overflight beyond the 12-nautical-mile territorial sea admitted under international law.

Judge ad hoc Orrego Vicuña's dissent concerns the fact that the Judgment establishes the endpoint of the parallel used for effecting the maritime delimitation at the distance of 80 nautical miles, a decision that does not find support in the applicable law as set out under the 1947 Presidential declarations, the 1952 Santiago Declaration and the 1954 Agreement on a Special Maritime Frontier Zone, nor in the abundant practice of both Peru and Chile. The combined effect of the equidistance line that the Judgment follows as from the endpoint of the parallel, and the area of the "outer triangle", when added to Peru's maritime entitlements results in a disproportionate assignment of maritime areas to each Party. The prospects of a negotiated access of Chilean vessels to the resources of the resulting Peruvian exclusive economic zone as envisaged under Article 62, paragraph 2, of the Convention on the Law of the Sea would have a mitigating effect on this disproportionate result. The dissent also notes in concluding that the role which the Court assigns to equity in maritime delimitation is at odds with the meaning of "equity" as bound by international law, which is expressly provided for under that Convention.

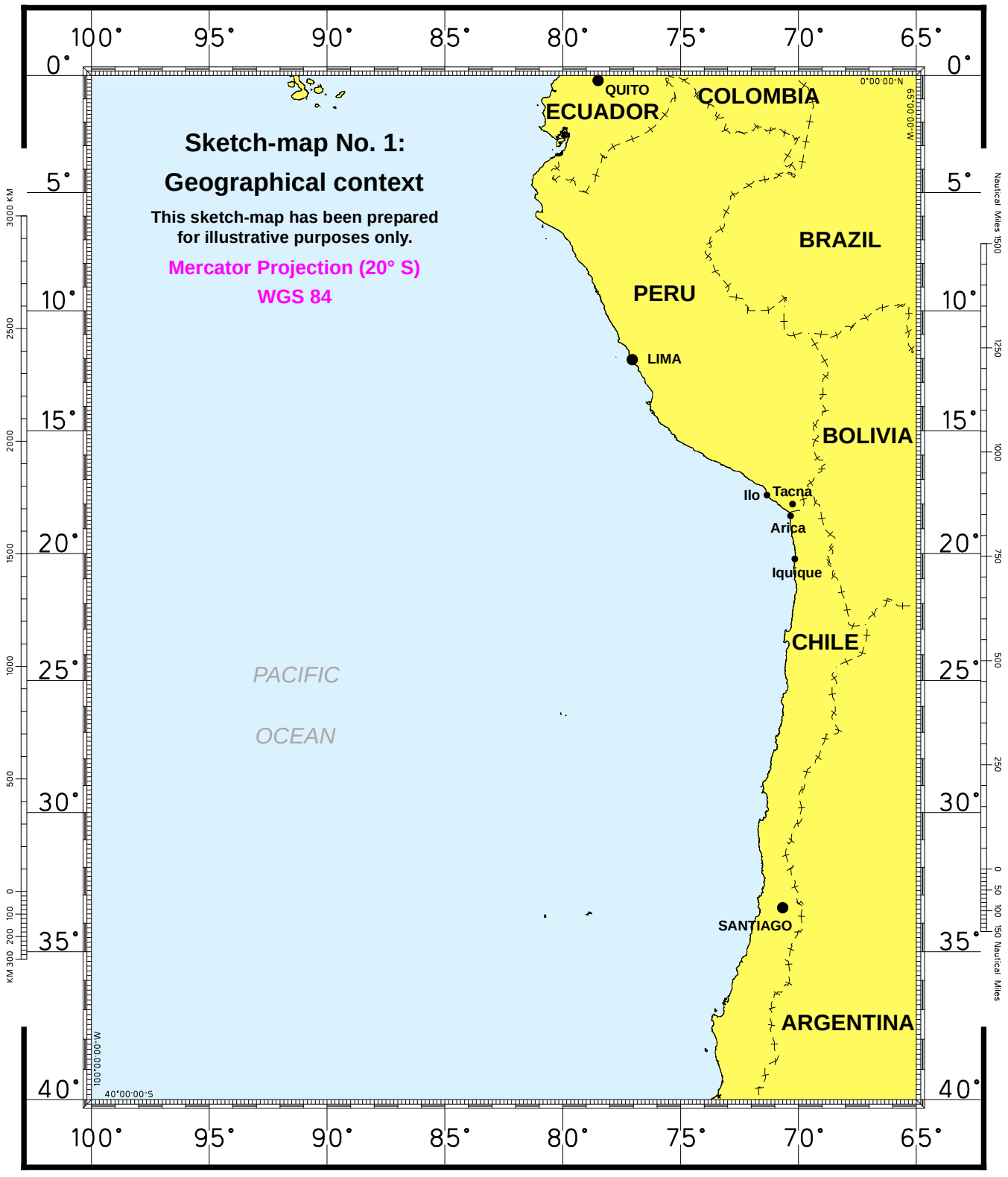
Annex 2 to Summary 2014/1

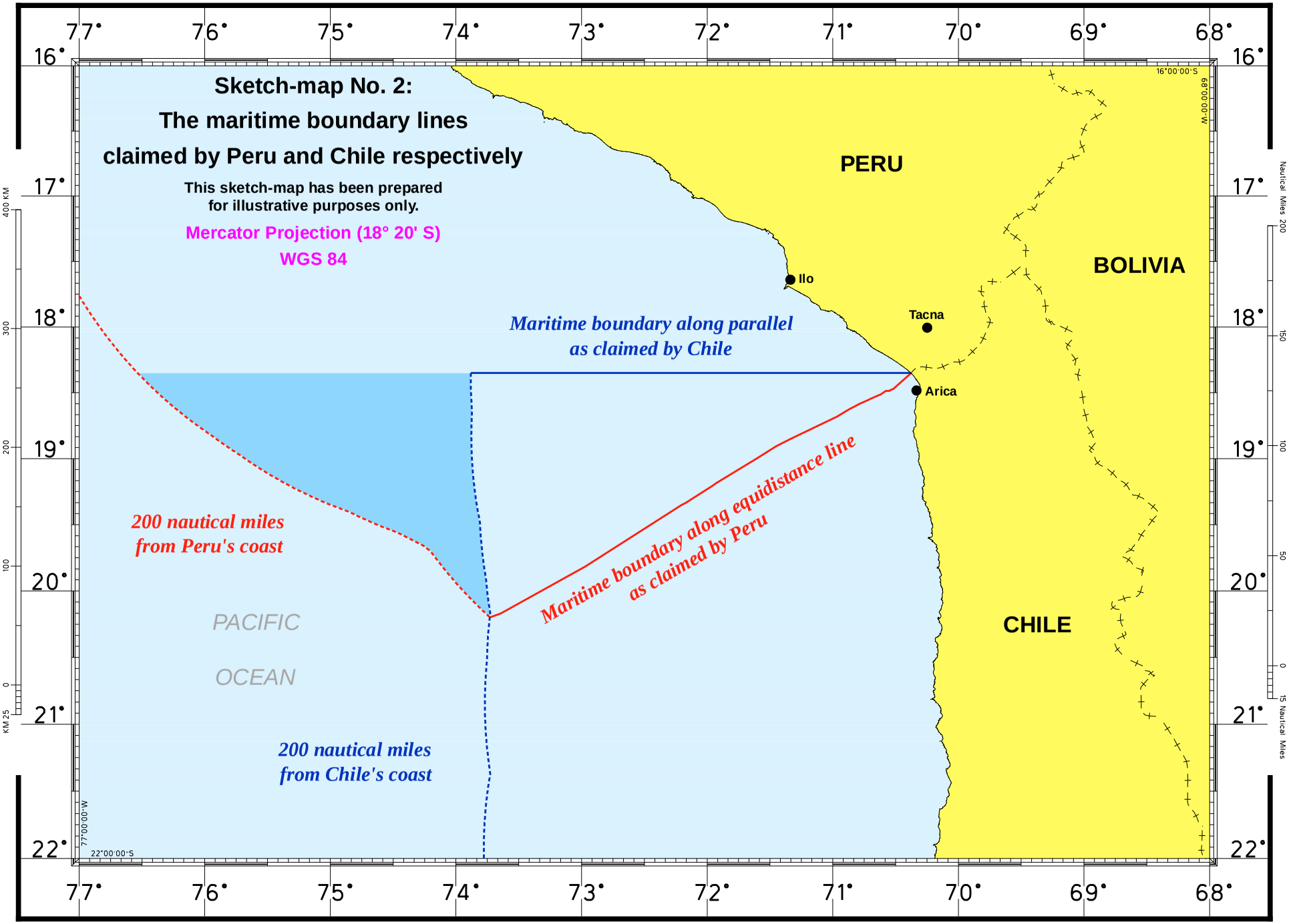
— Sketch-map No. 1: Geographical context

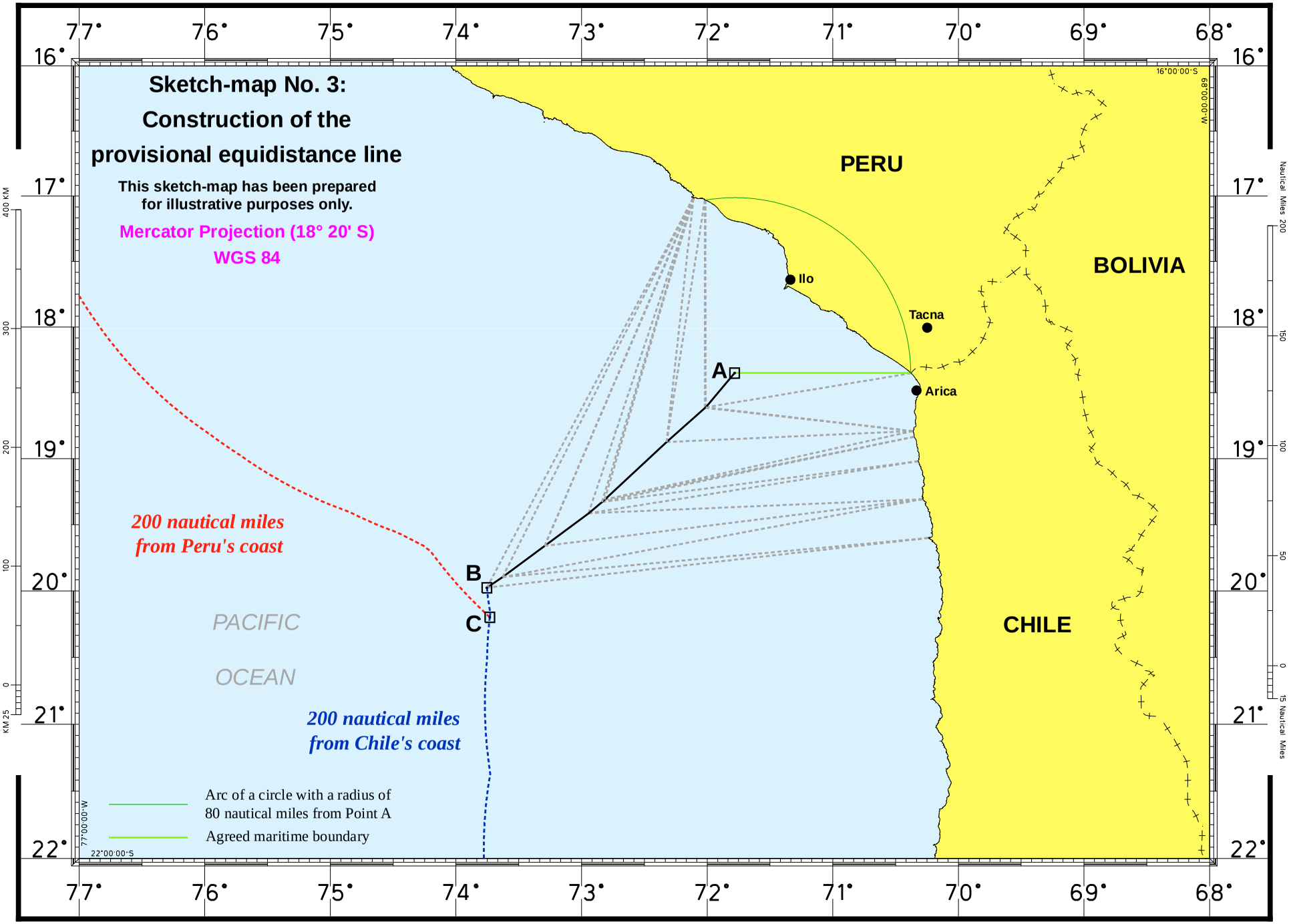
— Sketch-map No. 2: The maritime boundary lines claimed by Peru and Chile respectively

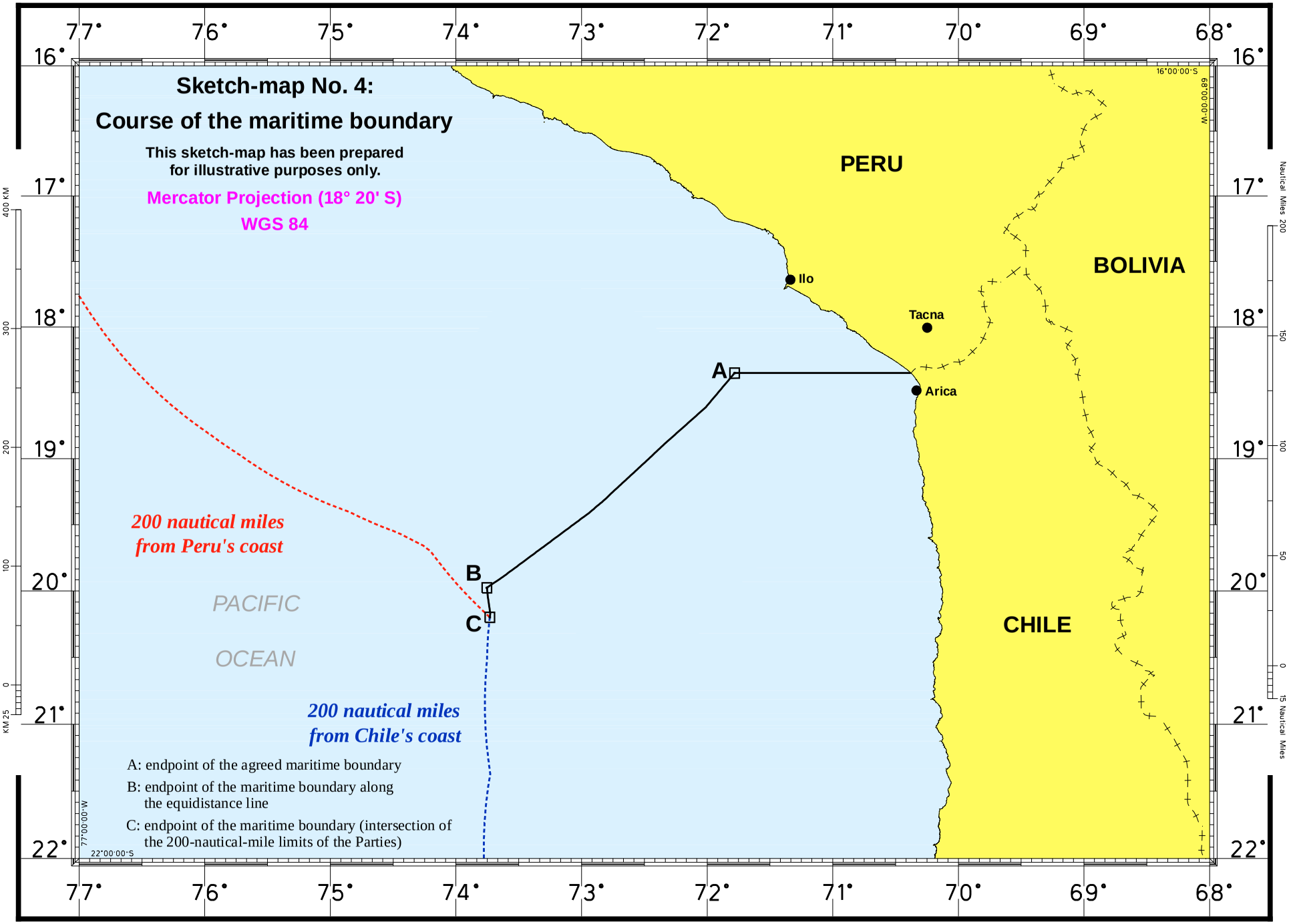
— Sketch-map No. 3: Construction of the provisional equidistance line

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


Sketch-map No. 1:
Geographical context
This sketch-map has been prepared for illustrative purposes only.
Mercator Projection (20° S)
WGS 84
QUITO
ECUADOR
COLOMBIA
BRAZIL
PERU
LIMA
BOLIVIA
Ilo
Tacna
Arica
Iquique
CHILE
SANTIAGO
ARGENTINA
PACIFIC
OCEAN
100°
95°
90°
85°
80°
75°
70°
65°
0°
5°
10°
15°
20°
25°
30°
35°
40°
0°00'00"N
65°00'00"W
100°00'00"W
40°00'00"S
3000 KM
2500
2000
1500
1000
500
0
100
200
300 KM
Nautical Miles
1500
1250
1000
750
500
250
0
50
100
150 Nautical Miles


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. 3:
Construction of the
provisional equidistance line
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
Arc of a circle with a radius of
80 nautical miles from Point A
Agreed maritime boundary
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°