UNA NUEVA CONTROVERSIA SOBRE DELIMITACIÓN MARÍTIMA Y LAS REGLAS DE INTERPRETACIÓN DE LOS TRATADOS*

LA SENTENCIA DE LA CORTE INTERNACIONAL DE JUSTICIA EN EL CASO DEL "DIFERENDO MARÍTIMO" (PERÚ C. CHILE). DECISIÓN SOBRE EL FONDO DEL 27 DE ENERO DE 2014

A NEW DISPUTE OVER MARITIME BOUNDARIES AND RULES OF TREATY INTERPRETATION

THE JUDGMENT OF THE INTERNATIONAL COURT OF JUSTICE IN THE CASE OF "MARITIME DISPUTE" (PERU V. CHILE). DECISION ON THE MERITS OF JANUARY 27, 2014

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Resumen: La Sentencia de la Corte Internacional de Justicia en el caso de Perú y Chile pone fin a la que es considerada la última controversia fronteriza entre estos Estados. El análisis de los postulados de la Corte en materia de interpretación de los tratados y en materia de derecho del mar nos permite arribar a conclusiones que se alejan de lo resuelto.

Abstract: The Judgment of the International Court of Justice in the case of Peru and Chile ends which is considered the last border dispute between these states. The analysis of the postulates of the Court on the interpretation of treaties and on law of the sea allows us to reach conclusions that are far from the decision

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I. Introducción

Perú, en la Memoria y la Réplica, solicita a la Corte (1) declarar que: (1) la delimitación entre las respectivas zonas marítimas entre la República de Perú y la República de Chile, es una línea que comienza en el 'Punto Concordia' (definido como la intersección con la marca de bajamar en un arco de radio de 10 kilómetros, que tiene como centro el primer puente sobre el río Lluta del ferrocarril Arica-La Paz) y equidistante de las líneas de base de las dos Partes, hasta un punto situado a una distancia de 200 millas náuticas contadas desde dichas líneas de base, y (2) más allá del punto donde termina la frontera marítima común, Perú tiene derecho a ejercer derechos soberanos exclusivos sobre un área marítima que se extiende hasta una distancia de 200 millas náuticas contadas desde sus líneas de base. Chile, en su Contra-Memoria y Contra-Réplica, solicita a la Corte: a) desestimar los alegatos del Perú en su totalidad; b) fallar y declarar que: i) los respectivos derechos de zonas marítimas de Chile y Perú han sido totalmente delimitados por acuerdo; ii) los derechos sobre las zonas marítimas están delimitados por una frontera que sigue el paralelo de latitud que pasa a través del marcador de frontera de límite más hacia el mar de la frontera terrestre entre Chile y Perú, conocido como Hito N º 1, que tiene un latitud de 18 ° 21 ' 00 " S bajo Datum WGS 84; y iii) Perú no tiene derechos sobre ninguna zona marítima extendida hacia el sur de dicho paralelo".

Chile fundamenta legalmente su posición en los principios internacionales de la norma *pacta sunt servanda* y el principio de la estabilidad de las fronteras. En virtud de este último principio sostiene que la Corte no tiene competencia para revisar una frontera ya acordada (Par.23).

Como se observa en este caso, el Perú y Chile adoptaron posiciones diametralmente opuestas. Perú sostuvo la inexistencia de un límite marítimo acordado entre las partes, y por ello, solicita a la Corte que lo demarque utilizando el método de la equidistancia con el fin de lograr un resultado equitativo. Chile, por su parte, manifiesta la existencia de ese límite marítimo internacional fundado en la Declaración de Santiago 1952 (Par.22).

Por ello, (Par. 24) para resolver el litigio, el Tribunal tuvo que examinar si, como afirmó Chile, ya existía una frontera marítima acordada. En ese sentido indagó sobre el alcance de: a) las proclamas 1947, b) la Declaración de Santiago de 1952 y c) varios acuerdos en 1952 y 1954, y d) luego reportar la práctica siguiente a la Declaración de Santiago de 1952.

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(1) La Corte estuvo integrada por: Presidente Tomka; Vice-presidente Sepúlveda-Amor; Jueces Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Xue, Donoghue, Gaja, Sebutinde, Bhandari; Jueces *ad hoc* Guillaume, Orrego Vicuña.

II. La Declaración de Santiago de 1952 y las reglas de Interpretación de los tratados

La Declaración de Santiago de 1952 es, a los fines de esta sentencia, el instrumento a interpretar ya que de conformidad a la interpretación que le dieran las Partes y la Corte, surgiría del mismo, o no, una delimitación de las fronteras marítimas entre los dos Estados en litigio.

En consecuencia, la resolución del litigio estuvo fundamentalmente ajustada a un problema de interpretación en cuanto a la existencia y alcance de dicho tratado, actos unilaterales anteriores y posteriores, acuerdos y prácticas ulteriores y otros acuerdos o prácticas ulteriores. Se trata en definitiva de la aplicación de los arts. 31 y 32 de la CV69 sobre el derecho de los tratados.

Es sabido que los artículos 31 y 32 de la Convención de Viena sobre el derecho de los tratados establecen, respectivamente, la regla general de interpretación y la regla sobre los medios de interpretación complementarios. Sin embargo, el objetivo de reiterar el artículo 31 1) en un párrafo aparte no es dar a entender que ese párrafo y los medios de interpretación mencionados en él son más importantes en el contexto del propio artículo 31. Todos los medios de interpretación del artículo 31 forman parte de una regla única integrada. En efecto, la interpretación de un tratado consiste en una sola operación combinada, que preste la debida atención a los diversos medios de interpretación indicados, respectivamente, en los artículos 31 y 32. En definitiva, el proceso de interpretación constituye una unidad. Estas reglas también son aplicables como derecho internacional consuetudinario. Los tribunales judiciales y arbitrales internacionales han reconocido este carácter.

La Corte así lo reconoce cuando parte en su razonamiento del análisis de la Declaración de Santiago 1952, otorgando el carácter de derecho internacional consuetudinario a las reglas sobre interpretación de los tratados establecidas en los artículos 31 y 32 de la Convención de Viena sobre el Derecho de tratados (Par. 57).

El punto de partida consiste en analizar si la Declaración de 1952 reviste las condiciones y naturaleza para ser considerado un tratado a la luz del derecho internacional. Perú sostuvo que la Declaración no fue celebrada como un tratado; sin embargo reconoció que adquirió valor de tratado después de la ratificación por todos los Estados signatarios (es decir, por Chile en 1954, y por Ecuador y Perú en 1955) y fue inscripta como tal en la Secretaría de las Naciones Unidas el 12 de mayo 1976 en virtud del apartado 1 del artículo 102 de la Carta de las Naciones Unidas (Par. 47). La Corte entiende que no se discute que la Declaración de Santiago de 1952 es un tratado internacional.

El punto a discernir es si dicho tratado estableció un límite marítimo entre las Partes (Par. 48). En tal sentido Perú manifiesta que dicha Declaración no posee las características de un tratado de límites. Evidentemente apoya su postura en que la "naturaleza" objeto, así como la estructura básica y la función de un tratado son elementos pertinentes e influyen en su interpretación.

El artículo 31 1) es el punto de partida de cualquier proceso de interpretación de los tratados, de acuerdo con la regla general recogida en el conjunto del artículo 31. El

propósito es contribuir a garantizar que en el proceso de interpretación haya un equilibrio entre la evaluación de los términos del tratado en el contexto de éstos y teniendo en cuenta su objeto y fin, por una parte, y las consideraciones relativas a los acuerdos ulteriores y la práctica ulteriormente seguida, por otra parte.

II.1. Interpretación textual o gramatical

Siguiendo este criterio la Corte (Par. 58) examinó en primer lugar el sentido corriente de los términos de la Declaración de Santiago de 1952 en su contexto, y en tal sentido se manifestó en que la Declaración no contiene ninguna referencia expresa a la delimitación de fronteras marítimas, sin perjuicio de hacer presente que comprende (en el punto IV) alguna relación con la cuestión de los elementos de delimitación marítima (Par. 60). Por ello desechó el argumento chileno de que el párrafo IV sólo se puede entender si se considera que la definición no sólo abarca las áreas marinas generadas por las islas, sino también toda la zona marítima general de los Estados Partes, fundado en el sentido corriente y en el contexto que debe entenderse tal párrafo (Pars. 61 y 62).

II.2. Interpretación teleológica. Objeto y propósito

De conformidad al art. 31 de la CV69 un tratado deberá interpretarse de buena fe conforme al sentido corriente que haya de atribuirse a los términos del tratado en el contexto de éstos y teniendo en cuenta su objeto y fin.

El objeto y fin del tratado son los elementos esenciales que las partes han tenido en cuenta para celebrarlo. Generalmente se encuentran consignados en su preámbulo, sin perjuicio de ubicarlos en cláusulas particulares del mismo o en otros acuerdos que puedan considerarse dentro de su contexto. En este sentido la consideración del objeto y fin del tratado respondería al método de interpretación textual o gramatical. Sin embargo, no hay que olvidar que objeto y fin, gramaticalmente significan finalidad, propósito, objetivo o intención. En este sentido, es indudable que sería de aplicación el método teleológico ya que estaría íntimamente vinculado al propósito o fin que guió a las partes a celebrar el tratado. La jurisprudencia ha establecido que sólo cuando se conoce lo que las partes intentaron hacer y el propósito que tuvieron al acordar, es posible interpretar el sentido corriente de los términos del tratado.

Teniendo en cuenta que Perú rechazó el argumento de Chile de que la Declaración de 1952 -de conformidad con el párrafo IV- establecía una delimitación marítima general (Par. 54), la Corte analiza el objeto y propósito de la Declaración, señalando que el preámbulo de la misma se centra más en la conservación y protección de los recursos naturales, que en un tema de delimitación.

Completando las reglas de interpretación del art. 31 de la CV, la Corte revisó además, dentro del contexto: a) todo acuerdo que se refiera al tratado y haya sido concertado entre todas las partes con motivo de la celebración del tratado; b) todo instrumento formulado por una o más partes con motivo de la celebración del tratado y aceptado por las demás como instrumento referente al tratado (art.31.2 a) y b) como así también lo dispuesto por el art.31.3 a) Todo acuerdo ulterior entre las partes acerca de la

interpretación o de la aplicación de sus disposiciones; b) Toda práctica ulteriormente seguida en la aplicación del tratado por la cual conste el acuerdo de las partes acerca de la interpretación del tratado; c) Toda norma de derecho internacional aplicable en las relaciones entre las partes (2).

Los apartados a) y b) del párrafo 3 del artículo 31 consignan lo que se denomina una interpretación "auténtica" del tratado, es decir aquella que realizan las propias partes del tratado, ya sea por un acuerdo o comportamiento posterior a su entrada en vigor a los fines de su interpretación o aplicación.

II.3. Interpretación auténtica. Acuerdos y prácticas ulteriores (3)

Los acuerdos ulteriores(4) y la práctica ulterior (5) mencionados en el artículo 31.3 a) y b), que constituyen una prueba objetiva del acuerdo de las partes en cuanto al sentido del tratado, son medios auténticos de interpretación(6) en aplicación de la regla general de interpretación de los tratados enunciada en el artículo 31. La práctica

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(2) El apartado c) del párrafo 3 del artículo 31, al establecer que, a los fines de la interpretación, debe tenerse en cuenta "toda norma pertinente de derecho internacional aplicables a las relaciones entre las partes", fija una regla de interpretación esencial a la hora de promover la armonización y otorgar garantías para la unidad del orden jurídico internacional. La interpretación textual de esta disposición permite extraer las siguientes conclusiones: a) No circunscribe las normas de derecho internacional aplicable en las relaciones entre las partes a las convencionales. En efecto, cuando la disposición se refiere a *toda norma pertinente de derecho internacional,* no descarta la aplicación de otras fuentes del derecho internacional, como el derecho consuetudinario y los principios generales del derecho; b) En consecuencia, la interpretación de un tratado debe tomar en cuenta todas las normas pertinentes de derecho internacional (no solo las convencionales sino también las generales) vigentes entre las partes en el momento en que haya que interpretarse el tratado; c) No está limitado en lo temporal. La aplicación de la disposición es intemporal en su relación con la determinación del momento en que puede proceder a aplicar otras normas de derecho internacional; d) También puede interpretarse esta disposición en el sentido que las partes no han querido celebrar un convenio contrario al derecho internacional; es decir, que el criterio de esta regla es que debe interpretarse el texto de un tratado en el sentido de que busca producir efectos de conformidad con el derecho existente y no violándolo.

(3) Informe de la Comisión de Derecho Internacional de Naciones Unidas en su 65º período de sesiones - Asamblea General - Sexagésimo octavo período de sesiones - Suplemento Nº 10 (A/68/10) - Los acuerdos ulteriores y la práctica ulterior en relación con la interpretación de los tratados.

(4) Por "acuerdo ulterior" como medio auténtico de interpretación en virtud del artículo 31 3) a) se entiende un acuerdo sobre la interpretación del tratado o la aplicación de sus disposiciones al que hayan llegado las partes después de la celebración del tratado.

(5) Por "práctica ulterior" como medio auténtico de interpretación en virtud del artículo 31 3) b) se entiende el comportamiento observado en la aplicación del tratado, después de su celebración, por el cual conste el acuerdo de las partes en cuanto a la interpretación del tratado.

(6) No existen diferencias entre las expresiones "medios de interpretación" y "elementos de interpretación"; ambos se utilizan indistintamente. Cada uno de esos medios tiene una función en el proceso de interpretación, que es una "sola" operación y al mismo tiempo una operación "combinada". Los tribunales suelen comenzar su razonamiento considerando los términos del tratado, para luego analizar, en un proceso interactivo, esos términos en su contexto y teniendo en cuenta el objeto y fin del tratado. Lo que guía la interpretación es la evaluación del intérprete, que consiste en determinar la pertinencia de esos medios en un caso concreto y su interacción con los demás medios de interpretación.

ulterior a que se refieren los artículos 31 y 32 puede consistir en cualquier comportamiento en la aplicación de un tratado que sea atribuible a una parte en el tratado en virtud del derecho internacional (7).

La Convención de Viena distingue entre un "acuerdo ulterior" en virtud del artículo 31.3 a) y "toda práctica ulteriormente seguida por la cual conste el acuerdo de las partes acerca de la interpretación del tratado" en virtud del artículo 31.3 b). Esta distinción no es siempre clara. La diferencia entre los dos conceptos estriba más bien en el hecho de que todo "acuerdo ulterior entre las partes" produce *ipso facto* el efecto de constituir una interpretación auténtica del tratado, en tanto que "práctica ulterior" únicamente produce ese efecto si sus diferentes elementos, tomados en conjunto, ponen de manifiesto el acuerdo común de las partes sobre el sentido de los términos(8). Así pues, los acuerdos ulteriores y la práctica ulterior en virtud del artículo 31.3 se diferencian en función de que pueda determinarse un acuerdo de las partes *como tal*, en un acto común, o de que sea necesario determinar la existencia de un acuerdo por medio de actos individuales que en conjunto demuestran una posición común.

Existen tres diferentes medios "ulteriores" de la interpretación de los tratados, es decir, el "acuerdo ulterior" en virtud del artículo 31.3 a), la "práctica ulterior" en virtud del artículo 31.3 b) y la otra "práctica ulterior" en virtud del artículo 32. En los tres casos, el término "ulterior" se refiere a actos que tienen lugar "después de la celebración del tratado". El artículo 31.3 a) emplea el término "acuerdo ulterior" y no el de "tratado ulterior". No obstante, un "acuerdo ulterior" no es necesariamente menos formal que un "tratado". La CV69 no prevé ningún requisito formal particular para los acuerdos y la práctica en virtud del artículo 31.3 a) y b). Aunque todo tratado es un acuerdo, no todo acuerdo es un tratado. En efecto, todo "acuerdo ulterior" en virtud del artículo 31 3) a) solo "habrá de tenerse en cuenta" en la interpretación de un tratado. Por consiguiente, no es necesariamente vinculante(9). En algunos casos un acuerdo ulterior entre las partes puede ser vinculante y, en otros, podrá ser simplemente un medio de interpretación entre varios otros.

La distinción entre la "práctica ulterior" por la que consta el acuerdo de las partes en el sentido del artículo 31.3 b) de la Convención de Viena, por un lado, y otra práctica ulterior (en un sentido amplio) de una o varias partes en el tratado, pero no todas, que

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(7) Todo otro comportamiento, incluido el de actores no estatales, no constituye práctica ulterior con arreglo a los artículos 31 y 32. No obstante, dicho comportamiento puede ser pertinente al evaluar la práctica ulterior de las partes en un tratado.

(8) La práctica ulterior cuando es uniforme, coherente y seguida por la mayoría de las partes, constituye un elemento decisivo para determinar el sentido y alcance de los términos del tratado. Constituye una prueba del consenso de las partes sobre la interpretación del tratado y cumple el mismo fin que un acuerdo sobre tal interpretación. El consentimiento colectivo para que equivalga a una verdadera interpretación auténtica del tratado, puede manifestarse no solamente mediante un obrar positivo, sino también manifestarse tácitamente, ya que sea mediante la aquiescencia o bien por la ausencia de protesta ante la conducta seguida por la mayoría de las partes.

(9) La posibilidad de que las partes lleguen a un acuerdo interpretativo ulterior de carácter vinculante está particularmente clara en los casos en que el propio tratado así lo prevé.

pueda ser pertinente como medio de interpretación complementario en virtud del artículo 32. Esa "otra" práctica interpretativa ulterior por la cual no conste el acuerdo de todas las partes no puede constituir una interpretación "auténtica" de un tratado.

II.3.1. Acuerdos ulteriores

Los acuerdos ulteriores o la práctica ulterior a que se refiere el artículo 31.3 a) y b) son medios "auténticos" de interpretación porque son expresiones del sentido atribuido al tratado por los propios Estados partes, es decir, constituyen una prueba objetiva del acuerdo de las partes. Los acuerdos ulteriores y la práctica ulterior como medios auténticos de interpretación de los tratados no se deben confundir con la interpretación de los tratados por los tribunales judiciales y arbitrales internacionales. La autoridad de los tribunales judiciales y arbitrales internacionales y los órganos creados en virtud de tratados procede más bien de otras fuentes, pueden ser indirectamente pertinentes para la determinación de los acuerdos ulteriores y la práctica ulterior como medios auténticos de interpretación si reflejan tales acuerdos ulteriores y práctica ulterior de las partes mismas o los inspiran

Efectuada esta aclaración, veamos qué valor otorga la Corte a los acuerdos posteriores a la Declaración de Santiago de 1952 (Par. 71). Entre los acuerdos adoptados en el año 1954, Chile reportó en particular como instrumento principal el Convenio complementario de la Declaración de Santiago de 1952 desarrollado en la Conferencia Interestatal de 1954, que reafirma la reclamación de soberanía y jurisdicción frente a terceros países. En la opinión de la Corte, se encuentra bien establecido que el principal objetivo de este acuerdo complementario era especialmente reafirmar frente a las principales potencias marítimas la soberanía y jurisdicción sobre espacios marítimos hecho conjuntamente en 1952. Asimismo, el objetivo era colaborar en la preparación de una defensa común de este reclamo en contra de las protestas de los Estados (Par. 77). Otro acuerdo posterior alegado por Chile fue la Convención sobre las medidas de seguimiento y control en las zonas marítimas de los países signatarios.

Pasa la Corte a analizar El acuerdo sobre una zona especial fronteriza marítima. Según el Tribunal, no hay nada en este acuerdo de 1954 sobre un área de la frontera marítima especial que podría limitar el alcance de la misma a la única frontera marítima entre Ecuador y Perú (Par. 85). En opinión de la Corte, los términos operativos y el propósito del Convenio de la Zona Especial Fronteriza Marítima de 1954 son, ciertamente, específicos y limitados. Para la Corte el punto central a dilucidar es si el mismo determina la existencia de una frontera marítima. En este tema los términos del Convenio de la Zona Especial Fronteriza Marítima de 1954, especialmente el Artículo 1 leído a la luz de los párrafos del Preámbulo, son claros. Ellos reconocen la existencia de un acuerdo internacional vinculante referido a una frontera marítima(10). Las Partes, como

(10) "91. El Convenio de la Zona Especial Fronteriza Marítima de 1954 no indica cuándo y por qué medios esa frontera fue acordada. El reconocimiento expreso de las partes sobre su existencia, sólo puede reflejar un acuerdo tácito al que llegaron previamente. En este caso, la Corte tiene ante ella un Convenio que es claro en establecer que la frontera marítima a lo largo de la línea paralela ya existía entre las Partes. El Convenio de 1954 es determinante en este aspecto. El Convenio consolida el acuerdo tácito".

la Corte, no encuentran diferencia alguna, en este contexto, entre la expresión "límite marítimo" en el artículo 1" y la expresión "frontera marítima" en el Preámbulo (Par. 90). El Convenio de la Zona Especial Fronteriza Marítima de 1954 no indica cuándo y por qué medios esa frontera fue acordada. El reconocimiento expreso de las partes sobre su existencia, sólo puede reflejar un acuerdo tácito al que llegaron previamente (Par. 91).

Otro acuerdo posterior que analiza la Corte es el atinente a los faros 1968-1969, referidos a la construcción de un faro por cada Estado en el punto en el cual la frontera alcanza el mar, cerca del Hito Nº uno (1) (par. 96). La Corte considera, como también reconocen las Partes, que el objetivo y el alcance geográfico de las disposiciones de esos acuerdos eran limitados. Tenían por objeto dar cumplimiento a un propósito específico. Asimismo, señala que el proceso de documentación que lleva a la conclusión de los acuerdos y construcción de los faros no contiene ninguna referencia a los límites marítimos. Sin embargo, la Corte considera importante resaltar que los acuerdos se basan en una frontera marítima preexistente a lo largo del paralelo más allá de 12 millas náuticas. Estos acuerdos, al igual que el Acuerdo de 1954 sobre una zona especial fronteriza marítima, confirman la existencia de una frontera marítima pero no indican el alcance o la naturaleza de la misma (Par. 99).

La Corte también analiza los efectos jurídicos posibles sobre las posiciones de las Partes durante la tercera Conferencia de las Naciones Unidas sobre el Derecho del Mar (Par. 135) y el Memorándum Bákula 1986 (Par. 136). Sobre lo primero entiende que las declaraciones de los representantes peruanos a la tercera Conferencia de las Naciones Unidas sobre el Derecho del Mar en relación a los posibles tratados de límites marítimos entre los Estados no proporcionan ninguna luz sobre el alcance de la frontera marítima existente entre Perú y Chile. En cuanto a lo segundo (el memorándum presentado el 23 de mayo 1986 por el ministro de Relaciones Exteriores de Chile Sr. Bákula), la Corte no interpreta el memorando Bákula como una solicitud para renegociar una frontera marítima existente. Por el contrario, este insta a "la formal y definitiva delimitación de los espacios marítimos". En opinión de la Corte, los términos usados en ese memorando reconocen la existencia de una frontera marítima, sin dar información precisa de su alcance (Par. 141).

II.3.2. Prácticas ulteriores

La práctica posterior cuando es uniforme y la siguen todas las partes, puede llegar a ser un elemento decisivo para determinar el sentido que deba atribuirse al tratado, *al menos* cuando indica que las partes consideran que están obligadas por la interpretación. En estos casos, la práctica posterior como elemento de la interpretación del tratado y como elemento de la formación de un acuerdo tácito se superponen y el sentido que se deriva de esa práctica se convierte en una interpretación auténtica establecida por acuerdo". Esa práctica ulterior (en sentido estricto) se distingue de otra "práctica ulterior" (en sentido amplio) de una o varias partes por la cual no consta el acuerdo de las partes pero que, no obstante, puede ser pertinente como medio de interpretación complementario en virtud del artículo 32 de la Convención de Viena. Se hace difícil distinguir entre la práctica ulterior que específica y resueltamente se refiere a un tratado, es decir, es una práctica "acerca de la interpretación del tratado",

y otra práctica "en la aplicación del tratado". Ahora bien, esa distinción es importante porque sólo el comportamiento observado por las partes "acerca de la interpretación del tratado" puede contribuir a una interpretación auténtica, mientras que ese requisito no existe para otra práctica ulterior en virtud del artículo 32.

La práctica ulterior en virtud del artículo 31.3 b) puede consistir en cualquier "comportamiento". Puede comprender así, no sólo los actos, sino también las omisiones, incluido el silencio pertinente, que contribuyen a establecer el acuerdo. La práctica ulterior en virtud del artículo 31.3 b) debe ser un comportamiento observado "en la aplicación del tratado". Esto comprende, no sólo los actos oficiales en el ámbito internacional o el ámbito interno que sirven para aplicar el tratado, incluido respetar o velar por el cumplimiento de las obligaciones del tratado, sino también, entre otras cosas, las declaraciones oficiales sobre su interpretación, como las declaraciones formuladas en una conferencia diplomática, las declaraciones hechas en el transcurso de una controversia jurídica o las sentencias de los tribunales internos; las comunicaciones oficiales que suscite el tratado, o la promulgación de disposiciones legislativas internas o la celebración de acuerdos internacionales a los efectos de aplicar un tratado, incluso antes de que tenga lugar un acto concreto de aplicación en los ámbitos interno o internacional.

La práctica ulterior en la aplicación de un tratado estará originada por quienes han de aplicar el tratado, que en general son los propios Estados partes. Ello no excluye que el comportamiento de actores no estatales también pueda constituir una forma de aplicación del tratado si puede ser atribuido a un Estado parte. El "otro comportamiento" puede ser el de diferentes actores. La cuestión de los posibles autores de la práctica ulterior con arreglo a los artículos 31 y 32. La expresión "con arreglo a los artículos 31 y 32" deja claro que se aplica a la práctica ulterior no solo como medio auténtico de interpretación en virtud del artículo 31.3 b) sino también como medio de interpretación complementario en virtud del artículo 32 de la Convención de Viena.

La expresión "al evaluar la práctica ulterior" debe entenderse en un sentido amplio que abarque tanto la determinación de la existencia de una práctica ulterior como la determinación de su importancia jurídica.

La Corte al considerar el alcance de la frontera marítima convenida recuerda que el propósito del Convenio de 1954 era limitado y específico: se refiere a la existencia de una frontera marítima para un propósito en particular, principalmente el de establecer una zona de tolerancia para la actividad pesquera operada por pequeñas embarcaciones. En consecuencia, debe considerarse que la frontera marítima cuya existencia este reconoce, a lo largo del paralelo, se extiende necesariamente a la distancia hasta donde para la época estas actividades tuvieron lugar. Esas actividades constituyen uno de los elementos de la práctica de las Partes que la Corte entrará a considerar, pero no es el único elemento que amerita su consideración. La Corte examinará otras prácticas relevantes de las Partes a inicios y mediados de los años 1950, como también un contexto más amplio, en particular, la evolución del derecho del mar en aquella época. Ella examinará igualmente la práctica de las Partes después de 1954. Este análisis puede contribuir a la determinación del contenido del acuerdo tácito al que las Partes llegaron con respecto al alcance de la frontera marítima (Par. 103).

Las primeras actividades pesqueras por parte de Chile y Perú se remontan a inicios de la década de 1950. Las prácticas ulteriores realizadas por Chile y que contaron con el asentimiento tácito de Perú relativas a la pesca fueron un argumento alegado por Chile en el sentido de la existencia de un límite marítimo entre los dos Estados. Perú puso en duda que una frontera marítima puede derivar su origen a partir de una supuesta práctica (Par. 54). Esta situación fue reconocida por el Tribunal: "La Corte, evaluando el alcance de la frontera marítima lateral que las partes reconocieron en 1954, es consciente, a efectos de determinar el alcance de la frontera marítima lateral cuya existencia fue reconocida por las Partes en 1954, de la importancia que la pesca ha tenido para las poblaciones costeras de ambas Partes (Par. 109). Sin embargo, adhiriendo a la posición peruana, la Corte señala que la evidencia relativa a la actividad pesquera, por si sola, no puede ser la determinante del alcance de esa frontera. No obstante, la actividad pesquera provee cierto soporte a la visión de que las Partes, al momento en que reconocieron la existencia de una frontera marítima convenida entre ellas, aunque difícilmente consideraran que se extendiera hasta el límite de las 200 millas náuticas (Par. 111). También la Corte examina la práctica posterior, cuando las partes ya habían reconocido la existencia de su frontera marítima. A ese respecto señala que hasta mediados de la década de 1980, todos los incidentes relacionados con las dos partes ocurrieron dentro de las sesenta millas náuticas de la costa, y en general, aún más cerca (Par. 128). Concluye que la práctica examinada no proporciona ningún motivo para cuestionar la conclusión provisional a la que la Corte llegó sobre la base de las actividades de pesca de las Partes y de la evolución que el Derecho del Mar, a principios de y mediados de la década de 1950.

Después de revisar el contexto regional específico, la Corte aborda el contexto más amplio de la década de 1950, en el momento del reconocimiento por las Partes de la existencia de la frontera marítima. Este contexto consiste en la práctica de los Estados, los estudios realizados por la Comisión de Derecho Internacional y de las reacciones de los Estados o grupos de Estados a las propuestas sobre la creación de las zonas marítimas más allá del mar y la delimitación territorial de estas zonas. En cuanto a la práctica de la década de 1950, debe tenerse en cuenta varias proclamaciones unilaterales (Par. 112). Estas proclamas, todas las cuales fueron hechas entre 1945 y 1956 se pueden dividir en dos categorías. Pertenecen a la primera categoría las que se limitan a la reclamación de los fondos marinos, subsuelo de la plataforma continental y sus recursos(11). Las proclamaciones de la segunda categoría también apuntan aguas sobre la plataforma continental y el fondo marino, o los recursos que contienen(12) (Par. 113).

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(11) Reclamaciones hechas por Estados Unidos (1945), México (1945), Argentina (1946), Arabia Saudí (1949) Filipinas (1949), Pakistán (1950), Brasil (1950), Israel (1952), Australia (1953), India (1955) Portugal (l956), y aquellas realizadas respecto a numerosos territorios bajo autoridad del Reino Unido para la época (entre 1946 a 1954), como también las de 9 Estados árabes bajo protectorado del Reino Unido en el año 1949.

(12) Se incluyen entre ellas las realizadas por Estados Unidos (28 de septiembre de 1945), Panamá (17 de diciembre de 1946), Islandia (5 de abril de 1948), Costa Rica (5 de Noviembre de 1949), Honduras (7 de Marzo de 1950), El Salvador (7 de Septiembre de 1950) y Nicaragua (1 de Noviembre de 1950).

La Corte observa que, durante el período, la propuesta relativa a los derechos del Estado en las aguas alrededor de sus costas, que era el más cercano a ser ampliamente aceptado a nivel internacional, fue uno que incluía un mar territorial de seis millas marinas, al que se añadió una zona de pesca de seis millas náuticas y algunas reservas sobre los derechos de pesca establecidos (13). Como señaló el Tribunal de Justicia, el concepto de la zona económica exclusiva de 200 millas (Delimitación marítima en el Mar Negro (Rumania c. Ucrania), Sentencia, ICJ *Reports 2009*), tardó más de treinta años antes de que fuera generalmente aceptado en la práctica y en la Convención de las Naciones Unidas sobre el Derecho del Mar de 1982 (Par. 116). Por todo ello, y teniendo en cuenta que las actividades de pesca de las Partes en esa época, se ejercía a una distancia de aproximadamente 60 millas náuticas de los principales puertos de la región, así como la práctica de otros Estados, el Tribunal consideró que las pruebas no eran suficientes para poder llegar a la conclusión de que la frontera marítima acordada siguió el paralelo extendido más allá de 80 millas náuticas desde su punto de partida (Par. 117).

A la luz de esta conclusión preliminar, la Corte procedió a examinar otros elementos de la práctica posterior al año 1954, que pudieran ser relevantes para la cuestión de

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(13) En materia del Derecho del Mar se presentan puntos verdaderamente controversiales en esta sentencia. Toda interpretación evolutiva del sentido de un término a lo largo del tiempo debe estar justificada como consecuencia del proceso ordinario de interpretación de los tratados aplicando los diversos medios de interpretación que se mencionan en los artículos 31 y 32 de la Convención de Viena, caso por caso. En cualquier caso, las resoluciones en las que la Corte Internacional de Justicia ha adoptado una interpretación evolutiva no se han desviado del posible sentido del texto ni de la intención presunta de las partes en el tratado, como se habían expresado también en los acuerdos ulteriores y la práctica ulterior. Los acuerdos ulteriores y la práctica ulterior como medio de interpretación que puede ofrecer indicaciones útiles al intérprete para evaluar, como parte del proceso ordinario de interpretación de los tratados, si el sentido de un término es susceptible de evolucionar con el tiempo. En el caso de los tratados, la cuestión del denominado derecho intertemporal se ha planteado tradicionalmente en términos de si un tratado debe interpretarse a la luz de las circunstancias y el derecho existentes en el momento de su celebración (interpretación "contemporánea" o "estática") o a la luz de las circunstancias y el derecho existentes en el momento de su aplicación (interpretación "evolutiva" o "dinámica"). La CDI al tratar el tema la fragmentación del derecho internacional llegó a la conclusión en 2006 de que era difícil formular y llegar a un acuerdo sobre una norma general que diera preferencia a un principio de interpretación contemporánea o a un principio que reconociera de forma general la necesidad de tener en cuenta la "evolución del sentido" de los tratados. Los medios de interpretación de los tratados pueden ayudar a determinar si una interpretación evolutiva *es o no* adecuada en relación con un término concreto de un tratado. La jurisprudencia de los tribunales judiciales y arbitrales internacionales confirma este planteamiento. Los diversos tribunales judiciales y arbitrales internacionales que han utilizado la interpretación evolutiva, aunque en distinto grado, parecen haber seguido un enfoque caso por caso para determinar, mediante el recurso a los diversos medios de interpretación de los tratados a los que se hace referencia en los artículos 31 y 32, si conviene o no atribuir a un término de un tratado un sentido susceptible de evolucionar con el tiempo. La Corte Internacional de Justicia, en particular, ha seguido dos tendencias en su jurisprudencia, una a favor de una interpretación más "contemporánea" y la otra a favor de una interpretación más "evolutiva". Las resoluciones que favorecen un enfoque más contemporáneo conciernen principalmente a términos específicos de los tratados, mientras las que propician una interpretación evolutiva parecen estar relacionados con términos más generales. La Corte Interamericana de Derechos Humanos también de forma más general sigue un enfoque evolutivo en materia de interpretación, en particular en el marco de su aplicación del principio denominado *pro homine.*

la extensión de la frontera marítima acordada, entre ellas la práctica legislativa de los Estados parte. La Corte considera que estos textos sirven para delimitar los distritos marítimos de las Partes internamente (Par. 144), pero que resoluciones de esta naturaleza emitidas por los Estados no son de utilidad alguna para determinar la extensión de la frontera marítima que las Partes reconocieron en 1954 (Pars. 118/122).

No nos parece acertada tal conclusión, ya que si bien es cierto que el artículo 27 de la Convención de Viena es válido e importante, de esa norma no se infiere que la legislación nacional no pueda tenerse en cuenta como un elemento de la práctica ulteriormente seguida en la aplicación del tratado. En efecto, generalmente la doctrina distingue entre las disposiciones legislativas nacionales (y otras medidas de aplicación adoptadas en el ámbito interno) que violan las obligaciones dimanantes de un tratado, y las disposiciones legislativas y otras medidas adoptadas en el ámbito nacional que pueden servir para interpretar el tratado.

III. Medios complementarios de interpretación

Chile sostuvo que se desprende del apartado IV de la Declaración de 1952 de Santiago, la frontera marítima entre los Estados Partes. En apoyo de este argumento, se basó en las actas de la conferencia del 11 de agosto de 1952 (Par. 51). Perú rechazó el argumento de Chile en el sentido de que la referencia a un límite de una isla (mencionada en el párrafo IV) no es suficiente para fijar una delimitación marítima general del párrafo IV. Asimismo puso en duda que una frontera marítima puede derivar su origen a partir de una supuesta práctica (Par. 54). La Corte señaló que tanto las proclamas en 1947, teniendo en cuenta el tiempo y las circunstancias en que fueron formuladas, como las mencionadas actas no permiten interpretarlas como el reflejo de una forma habitual que conlleve a que las Partes han convenido fijar una delimitación marítima.

Debemos considerar que toda interpretación debe tratar de determinar la intención de las partes. La expresión "intención presunta" se entiende como la intención de las partes tal como ha sido determinada mediante la aplicación de los diversos medios de interpretación reconocidos en los artículos 31 y 32. Por lo tanto, la "intención presunta" no es una voluntad original que se pueda determinar por separado y los trabajos preparatorios no son el elemento primordial en que conviene basarse para determinar la intención presunta de las partes, sino que solo son, como indica el artículo 32, un medio de interpretación complementario. Sin embargo, hay que tener presente que la práctica ulteriormente seguida en la aplicación del tratado que no cumple todos los criterios del artículo 31.3 b)(14) queda, no obstante, englobada en el ámbito de aplicación del artículo 32 (15). Se podrá acudir a otra práctica ulteriormente seguida en la aplicación

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(14) Por otra "práctica ulterior" como medio de interpretación complementario en virtud del artículo 32 se entiende el comportamiento observado por una o más partes en la aplicación del tratado, después de su celebración.

(15) El artículo 32 contiene una lista no exhaustiva de medios de interpretación complementarios. En el párrafo 4 se toma prestada la expresión "se podrá acudir" del artículo 32 para mantener la distinción entre el carácter obligatorio de *tener en cuenta* los medios de interpretación enunciados en el artículo

del tratado como medio de interpretación complementario en el sentido del artículo 32. En particular, la práctica ulteriormente seguida en la aplicación del tratado por la cual no conste el acuerdo de todas las partes en el tratado, sino solo de una o varias partes, puede utilizarse como medio de interpretación complementario. Toda práctica seguida en la aplicación del tratado que pueda proporcionar indicaciones acerca de cómo debería interpretarse el tratado puede constituir un medio de interpretación complementario pertinente en virtud del artículo 32.

IV. La extensión de la frontera marítima

En cuanto a la extensión de la frontera marítima, la Corte señala que los elementos de los que dispone no le permiten concluir la extensión de la frontera marítima, cuya existencia ya habían reconocido las partes en su momento en 80 millas, más allá de las 80 millas náuticas a lo largo del paralelo de latitud desde su punto de partida (Par. 149). Sobre este último particular, la Corte se abocó a determinar la ubicación del punto de partida de esta frontera y si este punto fue convenido entre ellas. La competencia de la Corte para el tema de los límites marítimos no se discute (Par. 163). Tomando en cuenta las disposiciones relativas a los faros (1968/1969), los representantes de ambas partes acordaron que iban a materializarse desde el paralelo que pasa por el hito Nº 1, paralelo que, según ellos, constituía la frontera marítima tal y como se lo hicieron saber a sus respectivos gobiernos (Par. 164). La Corte no va a decidir sobre la ubicación del punto de la Concordia, donde empieza la frontera terrestre. Este último puede no coincidir con el punto de partida de la frontera marítima. Por tanto, la Corte concluye que el punto de partida de la frontera marítima entre las partes está ubicado en la intersección del paralelo de latitud que pasa por el hito No.1 con la línea de bajamar. (Par. 176).

Como queda expresado, la Corte frente a la falta de coincidencia entre el Punto Concordia y el Hito Nº 1, se inclina que el punto de partida de la línea del paralelo es este último y a partir de allí comienza la distribución del área en litigio (16).

Por nuestra parte consideramos que entre Chile y Perú existía una frontera marítima ya acordada, que seguía la línea del paralelo a partir del punto donde concluye la frontera terrestre; siguiendo el análisis de la Corte, podemos compartir que dicho acuerdo era tácito, que no se encontraba plasmado en un tratado formal de límites, pero que sí se podía colegir de otros acuerdos celebrados por las partes y por la práctica de los Estados.

Entendemos que entre los acuerdos que evidencian la existencia de este acuerdo tácito hay que remarcar al Convenio relativo a la Zona Especial Fronteriza Marítima que de manera concluyente demuestra que entre los Estados existía una frontera marítima y que esa línea discurría por la línea del paralelo que constituía el *límite marítimo entre los dos países* (Ver punto II.3.1. Acuerdos ulteriores).

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31 y el carácter discrecional del uso de los medios de interpretación complementarios previstos en el artículo 32.

(16) Estas conclusiones fueron adoptadas por la Corte en su parte resolutiva (puntos 1) y 2) por 15 votos contra uno.

Teniendo presente que las Partes habían acordado una frontera marítima única que partía de la intersección entre el paralelo de latitud que pasa por el hito fronterizo No.1 y la línea de bajamar para seguir este paralelo hasta 80 millas náuticas, el Tribunal se aboca a determinar el curso de la frontera marítima más allá de esta distancia. En este sentido la Corte señala que anteriormente manifestó, de forma provisional, que los elementos de los que disponía no le permitían concluir que la frontera marítima, cuya existencia ya habían reconocido las Partes en su momento, se extendía más allá de las 80 millas náuticas a lo largo del paralelo de latitud desde su punto de partida, así como la práctica posterior examinada no le permitían cambiar de opinión. La Corte también tuvo en cuenta el hecho de que el simple reconocimiento, en 1954, de la existencia de un "frontera marítima" constituía una base muy débil para fundamentar la conclusión según la cual la frontera en mención se extendía más allá de la distancia a la que las Partes tenían, en su momento, la capacidad de explotar los recursos marinos y tomar las medidas de ejecución.

Sobre el particular, disentimos con la Corte que el acuerdo tácito referido alcanzase sólo hasta las 80 millas marinas. No existe fundamento alguno para considerar que el acuerdo tácito sólo alcanzaba a esta extensión, en primer lugar porque ambos Estados habían sido revolucionarios en su época al considerar que sus derechos se extendían más allá de los límites existentes, a mitad del siglo pasado, hasta una extensión de 200 millas marinas, en tal sentido si el acuerdo tácito existía, mal puede considerarse que se extendía hasta una distancia menor de lo que los propios Estados consideraban su frontera común. Sobre esto Perú es de los dos Estados quien sostuvo hasta muy recientemente que era soberano sobre la totalidad de la franja de 200 millas.

Tampoco puede cambiar esta afirmación el hecho de que los recursos pesqueros se encuentren principalmente hasta esa distancia, porque los acuerdos celebrados entre los Estados, si bien tenían por fin proteger los recursos de sus costas, no discriminaban entre aquellos que se encuentran a menos o más de 60 u 80 millas marinas, cuando está comprobado que aunque en mucha menor medida el control se ejercía sobre toda la extensión de las doscientas millas. Si partimos de la existencia de un acuerdo, y siendo este acuerdo ley para las partes, es de aplicación el viejo aforismo latino de no distinguir donde la ley no distingue (17).

Perú y Chile tenían la administración y disposición absoluta e incontestada entre sí de una franja de 200 millas marítimas con una frontera lateral que seguía la línea del paralelo.

La Corte considera que la línea del paralelo sólo alcanza hasta las 80 millas marinas y a partir de las 80 millas considera que, en base a las disposiciones de la Convemar, corresponde llegar a una solución que sea equitativa. Para ello recurre a un método ya utilizado en otros casos, consistente en tres etapas en la que la primera etapa es el trazado de una línea equidistante provisional, verificar en segundo término si existen circunstancias pertinentes que modifiquen dicha línea y finalmente hacer un control de proporcionalidad (Par. 180).

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(17) Ubi lex no distinguet debetur.

Pero en aras de ser exhaustivos, aun cuando consideramos que la Corte debió receptar la línea del paralelo como la frontera lateral entre Chile y Perú en toda su extensión, si se aceptase la existencia de un acuerdo tácito para las primeras 80 millas y que falta la delimitación de la frontera en el espacio restante, no lucen convincentes los argumentos dados por la Corte para el trazado de la línea a partir de las 80 millas y hasta las 200. La Corte traza la línea equidistante provisional a partir del punto exterior de la línea de las 80 millas, y entendemos que de esta manera se aparta del principio reconocido y aceptado de derecho del mar de que la tierra domina al mar. Para la traza de la línea equidistante provisional consideramos que el punto de partida debió ser donde termina la frontera terrestre, desde el punto externo de la línea de 80 millas trazar una línea recta paralela a la costa que busque la línea que se hubiese establecido teniendo en cuenta la configuración y la extensión de las costas de ambos estados. Una vez que se llegue a la intersección con la línea equidistante provisional y entonces hacer el control de proporcionalidad.

De esta manera se respetaría la clásica formula de que la tierra domina al mar, se logra la división en partes iguales del espacio marítimo en cuestión, y por las características geográficas se evita de la mejor manera posible el efecto de amputación de la proyección marítima de la costa o de una parte de ella respecto de uno de los Estados evitando desigualdades, teniendo en cuenta que la existencia de la línea del paralelo hasta las 80 millas ya produce este efecto.

Adviértase que la solución dada por la propia Corte no se ajusta a los principios imperantes en el Derecho del Mar, esto es así porque si partimos de la conclusión dada por la propia Corte de que existe un acuerdo para las primeras 80 millas pero no lo existe para el resto de la extensión, a los fines de la determinación de la traza de la línea provisional ninguna incidencia debería tener la línea de 80 millas marinas en la determinación de la delimitación del resto, con excepción de la determinación del punto de partida desde donde se buscará la línea equidistante provisional. Incluso si buscamos un resultado equitativo de los dos sistemas el que sostenemos sería el más indicado evitando que la mayor parte (casi la totalidad) del sector de mar más próximo a la costa quede para Chile.

La Corte no da mayores fundamentos para el trazado de la línea de la manera que lo hace limitándose a recordar que en ciertas oportunidades algunas delimitaciones fueron realizadas a partir de un punto no ubicado en la línea de la bajamar, sino en la costa como consecuencia de un acuerdo existente entre las partes, aunque reconoce que ninguno de esos casos se ajusta a la plataforma fáctica de las líneas trazadas en el presente.

La Corte se refiere entre los antecedentes a los casos Delimitación de la frontera marítima en la región del Golfo de Maine (Canadá / Estados Unidos de América) (18),

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(18) El caso del Golfo de Maine no fue resuelto por el pleno sino por una Sala de la Corte Internacional de Justicia en donde las partes establecían un plazo para la constitución de la sala ya que no querían una constitución de Sala que no fuera de su agrado, se le criticó que provocaba una regionalización del tribunal privándolo de universalidad, recuerdo una crítica justamente del ex-Juez de la Corte Álvarez (de origen

Sentencia, C.I.J. Recueil 1984; Frontera terrestre y marítima entre Camerún y Nigeria (Camerún c. Nigeria; Guinea Ecuatorial (interviniente), Sentencia, C.I.J. Recueil 2002 (19); Delimitación marítima en el Mar Negro (Rumania c. Ucrania), Sentencia, C.I.J

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chileno) para quien ante los ojos de la opinión pública este tipo de sentencia tenderían a poseer un menor valor desde el momento en que estas no expresan la opinión de todos los jueces y consecuentemente no podrían crear un precedente judicial a la par de las decisiones dictadas por la Corte en Pleno. En este caso la Corte resuelve que la Convención de 1958 no es pertinente al caso ya que no sólo se busca la delimitación de la plataforma continental (para lo cual establecía la línea de equidistancia lateral), sino que la finalidad es la fijación de una línea única para efectos tanto de la plataforma continental como de la zona de pesca suprayacente. En tal sentido expresa la Corte que aceptar la línea de equidistancia - circunstancias especiales significaría transformarla en una regla de derecho internacional general por lo cual rechaza su aplicación. Considera que no existe ningún método a aplicar que lleve en sí la marca de una mayor justicia, o de una mayor utilidad práctica. La Sala se orienta hacia la aplicación de los criterios derivados de la geografía de las costas: considera que el criterio a aplicar es por su carácter equitativo el que consiste en lograr una división por partes iguales de las zonas de convergencia y de sobreposición de las proyecciones marítimas de las costas de los Estados en litigio. Acepta la Sala que las condiciones geográficas y políticas del área de delimitación no reúne las condiciones ideales para una aplicación íntegra y exclusiva de éste criterio. En este sentido la Sala otorga valor a la diferencia nada despreciable, en el interior del área de delimitación, de la extensión de las costas de los países interesados. Asimismo, la Sala tuvo en cuenta el criterio complementario que tiene por equitativo la corrección parcial de un efecto de la aplicación del criterio de base que resultaría en al amputación de una costa, o de una parte de la costa, de su proyección adecuada en las extensiones marítimas que deban ser divididas. Fija el punto A como el de partida y traza dos línea perpendiculares (método geométrico) a las dos líneas costeras fundamentales en consideración, a saber: la línea que va de Cape Elizabeth al punto terminal de la frontera internacional, y la línea que va de ese mismo punto a Cape Sable, estas dos perpendiculares forman de un lado un ángulo agudo de cerca de 82º y del otro un ángulo obtuso de aproximadamente 278º. Es la bisectriz de ese segundo ángulo que la Sala consideró que debía ser la adoptada para el trazado del primer segmento. En el segundo segmento se toma en cuenta las costas enfrentadas de Nueva Escocia y Massachussets y se traza una línea media. Pero la Sala no sigue la línea media sino que tiene en cuenta que la parte del fondo el Golfo está enteramente ocupada por la costa continua de Maine y la frontera internacional está situada mucho más al noroeste en el Gran Manan Channel, en el ángulo del rectángulo que geométricamente representa el Golfo de Maine. Se toma en cuenta la diferencia de extensión entre las costas de los dos Estados vecinos, por lo que la corte aplica una corrección limitada. El lugar donde se produce el quiebre entre el primero y el segundo segmento que se encuentra a la misma altura que Chebogue Point. Finalmente el tercer segmento su extensión se encuentra en pleno océano no habiendo punto de referencia geográfico fuera del Golfo de Maine, nuevamente acude a un método geométrico que consistía en el trazado de una perpendicular con relación a la línea de cierre del Golfo, que parte desde el punto donde el segundo segmento se toca con la línea de cierre del Golfo y el punto de arribo a donde se produce la sobreposición de las reclamaciones de las 200 millas de ZEE por parte de ambos Estados. El último segmento de la línea coincidía con el Georges Bank el cual podía considerarse el verdadero objeto de la controversia.

(19) En este caso Camerún solicita que se determine el trazado de la frontera marítima entre los dos estados más allá de la línea fijada en 1975. Esta línea unía el punto 12, al que se llegó a través del plano Nº 3433 del Almirantazgo británico por los jefes de Estado de los dos países el 4 de abril de 1971 (Declaración de Yaundé II) y, el punto "G" en virtud de la Declaración firmada en Maroua el 1º de junio de 1975. La Corte considera en este caso que la delimitación hasta el punto "G" se hizo en base a acuerdos válidos internacionales entre las partes. En primer lugar reconoce que el Acuerdo anglo-alemán de 11 de marzo de 1913 es válido y aplicable en su totalidad ya que merced a este acuerdo se otorga a Camerún soberanía sobre la Península de Bakassi. Expresa que si bien la Declaración de Yaundé II fue cuestionada en varias ocasiones por Nigeria la entiende confirmada por los términos de la Declaración de Maroua a la que considera un acuerdo internacional concertado entre los Estados por escrito y en el que se traza una frontera, a pesar de su falta de ratificación por parte de Nigeria para la

Recueil 2009, en los cuales vamos a ver cuán alejados están esos precedentes del que nos ocupa en el presente. En efecto, en el Caso del Golfo de Maine, lo relevante es que geográfica y jurídicamente es tan disímil este caso con el que estamos analizando que no puede ser tomado como antecedente para dirimir el punto en cuestión. Se puede advertir que ninguna relación tiene con el caso en examen ya que el Punto A del que parte la delimitación es un punto predeterminado por ambas partes como condición para la realización de la delimitación, acuerdo que por otra parte es de carácter expreso, y porque el criterio y fundamentos utilizados por la Sala para hacerla son completamente diferentes. En el de la Frontera Marítima entre Camerún y Nigeria lo relevante es que el punto "G" se encuentra en la boca de salida entre la Punta Oeste y la Punta Este y no se aleja de manera apreciable de la costa por lo que tampoco guarda similitud al caso entre Perú y Chile ya que la línea respeta los principios de derecho del mar en materia de delimitación. El tercer caso citado por la Corte es el que inicia Rumania en contra de Ucrania para la delimitación de la Plataforma Continental y de la Zona Económica Exclusiva. Ambos Estados comparten que el punto a partir del cual deberá iniciarse la traza de la línea de delimitación es el que está convenido en el artículo 1 del Tratado relativo al régimen de fronteras del Estado del año 2003 a partir del cual se traza una línea única para ambas zonas. Ambos Estados eran parte ya de la Convemar.

Se puede verificar que ninguno de los casos citados guarda relación en su plataforma fáctica con el de Perú c/ Chile en cuanto al punto a partir del cual debe iniciarse la línea de equidistancia provisional. Así parece reconocerlo la Corte al manifestar que la situación que se le presenta en el presente caso es inusual ya que el punto de partida de la delimitación está mucho más alejado del litoral, a 80 millas náuticas del punto más cercano sobre la costa chilena y a unas 45 millas náuticas del punto más cercano de la costa peruana. En dos de los casos, los referidos al Golfo de Maine y el Mar Negro, las partes acordaron cual iba a ser el punto a partir del cual se efectúe la delimitación. Por su parte en el caso entre Camerún y Nigeria la Corte reconoció que el punto a partir del cual se iba a trazar la línea había sido establecido en un acuerdo expreso entre las partes en un punto que no se aleja de manera apreciable de la costa.

En los tres casos el punto es próximo a la bajamar a diferencia de lo que ocurre en el caso bajo examen donde la Corte parte de un punto a 80 millas de la costa, basado en un acuerdo tácito y teniendo en consideración que ninguna de las partes reconoce la existencia de dicho punto.

Teniendo en cuenta que lo resuelto por la Corte en las primeras 80 millas es la línea del paralelo y atento que esta parte considera que la totalidad de la frontera debió seguir esa línea compartimos con la Corte que no adquiere ninguna trascendencia las islas próximas a la línea y al continente y que la misma no tiene ninguna relevancia para alterar la línea del paralelo.

Corte la Declaración de Maroua entró en vigor inmediatamente después de su firma. Por esto la Corte considera que hasta el Punto G la frontera ya fue establecida de manera convencional y que a partir de allí se debe dar una solución equitativa. Con respecto a las circunstancias pertinentes alegadas por Camerún, la Corte no encuentra ninguna concavidad particular en el lugar a delimitar y tampoco diferencias en la extensión de la costa entre uno y otro Estado.

Sin embargo, no resulta entendible lo manifestado por la Corte respecto de que no es necesario referirse a la existencia de una pequeña isla localizada cerca de la costa en la región de la frontera terrestre Perú-Chile porque los documentos del caso demuestran que la cuestión de las zonas insulares, en el contexto de la Declaración de Santiago de 1952 se dio por una preocupación expresada por Ecuador. El hecho de que la preocupación haya emanado de los representantes ecuatorianos no hace que la disposición pierda su carácter de general, sobre todo teniendo en cuenta que aunque de menor entidad se verifica la existencia de islas en ambas fronteras. El hecho de que Chile le haya restado importancia a dichas islas en su Dúplica se debe a que este país consideraba que la frontera ya estaba delimitada. Lo cierto es que la determinación de la línea del paralelo para las primeras 80 millas resuelve esa cuestión (20).

La sentencia bajo examen es una señal de los riesgos que representa la Corte Internacional de Justicia para los Estados independientemente del nivel de certeza que tengan sobre su pretensión y, de las ventajas que presenta para quienes tienen poco o nada para perder aún cuando sus argumentos no sean lo suficientemente sólidos jurídicamente. Pero siguiendo una tendencia en varios de los últimos casos resueltos por la Corte, el presente caso refleja una realidad. No siempre las consecuencias jurídicas y políticas de las resoluciones de la Corte son inocuas. En esta línea se encuadra la Opinión Consultiva sobre la legalidad de la independencia de Kosovo largamente criticada(21) y que hoy, cuando la conveniencia cae en la cara opuesta de la moneda, la declaración de independencia de Crimea en Ucrania nos enfrenta a una realidad inesperada generando cierto grado de inestabilidad global.

Cuando examinamos originariamente los antecedentes del caso y la demanda presentada, opinamos que las posibilidades de Perú de lograr una sentencia favorable serían escasas. Estimábamos que la frontera marítima seguía la línea del paralelo en toda su extensión. Pero la constante búsqueda de dar satisfacción a ambas partes cuando se trata de controversias territoriales o fronterizas de parte de la Corte abría una puerta a la esperanza peruana. Posteriormente, cuando recién se había presentado la réplica, el panorama en Chile de parte de los especialistas era de un silencioso pesimismo puesto que todos estaban convencidos de tener la razón de su lado, pero esperaban como opción de máxima que la sentencia le otorgara a Perú el triángulo exterior, reconociendo la línea del paralelo como frontera y de esa manera cumplir con la máxima de dar satisfacción a ambas partes. Pero eso no ocurrió, la Corte nada dijo del triángulo exterior y en una construcción geométrica de apariencia equitativa distribuyó el área en litigio

(20) 64. Además, la Corte considera que no es necesario referirse a la existencia de una pequeña isla localizada cerca de la costa en la región de la frontera terrestre Perú-Chile. Los documentos del caso demuestran que la cuestión de zonas insulares, en el contexto de la Declaración de Santiago de 1952 se dio por una preocupación expresada por Ecuador. Resulta igualmente claro de los documentos del caso, que las pequeñas islas no parecen ser una preocupación para las Partes. Como estableció Chile en su Dúplica, al referirse a estas pequeñas islas, "[n]inguna de ellas se mencionó en las Actas de las negociaciones de la Declaración de Santiago de 1952… las únicas islas a las que se hizo referencia en el contexto de la Declaración de Santiago fueron las Islas Galápagos de Ecuador". Perú no rebatió esto.

(21) Benítez, Oscar C., *Kosovo una cuestión de principios,* en *Estudios de Derecho Internacional - Libro homenaje al Profesor Hugo Llanos,* Edit. Abeledo Perrot y Thomson Reuters, Santiago de Chile, 2012, págs. 3/22.

SENTENCIA

Tribunal: Corte Internacional de Justicia
Fecha: 27 de enero de 2014
Caso: *Delimitación Marítima (Perú c. Chile)*

ICJ - JUDGMENT (22)
Present: President TOMKA; Vice-President SEPULVEDA-AMOR; Judges OWADA, ABRAHAM, KEITH, BENNOUNA, SKOTNIKOV, CANCADO TRINDADE, YUSUF, XUE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI; Judges ad hoc GUILLAUME, ORREGO VICUNA; Registrar COUVREUR.

In the case concerning the maritime dispute, between the Republic of Peru, represented by (…).

And the Republic of Chile, represented by (…).

THE COURT, composed as above, after deliberation, delivers the following Judgment:

1. 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".

In its Application, Peru seeks to found the jurisdiction of the Court on Article XXXI of the American Treaty on Pacific Settlement signed on 30 April 1948, officially designated, according to Article LX thereof, as the "Pact of Bogota" (hereinafter referred to as such).

2. In accordance with Article 40, paragraph 2, of the Statute of the Court, the Registrar immediately communicated the Application to the Government of Chile; and, under paragraph 3 of that Article, all other States entitled to appear before the Court were notified of the Application.

3. Pursuant to the instructions of the Court under Article 43 of the Rules of Court, the Registrar addressed to States parties to the Pact of Bogota the notifications provided for in Article 63, paragraph 1, of the Statute of the Court. In accordance with the provisions of Article 69, paragraph 3, of the Rules of Court, the Registrar moreover addressed to the Organization of American States (hereinafter the "OAS") the notification provided for in Article 34, paragraph 3, of the Statute of the Court. As provided for in Article 69, paragraph 3, of the Rules of Court, the Registry transmitted the written pleadings to the

(22) Se acompaña la sentencia en inglés ya que el pronunciamiento en ese idioma es el que da fe.

OAS and asked that organization whether or not it intended to furnish observations in writing within the meaning of that article; the OAS indicated that it did not intend to submit any such observations.

4. On the instructions of the Court, in accordance with the provisions of Article 69,paragraph 3, of the Rules of Court, the Registrar addressed to the Permanent Commission for the South Pacific (hereinafter the "CPPS", from the Spanish acronym for "Comisión Permanente del Pacífico Sur") the notification provided for in Article 34, paragraph 3, of the Statute of the Court with regard to the Declaration on the Maritime Zone, signed by Chile, Ecuador and Peru, in Santiago on 18 August 1952 (hereinafter the "1952 Santiago Declaration"), and to the Agreement relating to a Special Maritime Frontier Zone, signed by the same three States in Lima on 4 December 1954 (hereinafter the "1954 Special Maritime Frontier Zone Agreement"). In response, the CPPS indicated that it did not intend to submit any observations in writing within the meaning of Article 69, paragraph 3, of the Rules of Court.

5. On the instructions of the Court under Article 43 of the Rules of Court, the Registrar addressed to Ecuador, as a State party to the 1952 Santiago Declaration and to the 1954 Special Maritime Frontier Zone Agreement, the notification provided for in Article 63, paragraph 1, of the Statute of the Court.

6. Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party proceeded to exercise the right conferred upon it by Article 31, paragraph 3, of the Statute to choose a judge ad hoc to sit in the case. Peru chose Mr. Gilbert Guillaume and Chile Mr. Francisco Orrego Vicuna.

7. By an Order dated 31 March 2008, the Court fixed 20 March 2009 as the time-limit for the filing of the Memorial of Peru and 9 March 2010 as the time-limit for the filing of the Counter-Memorial of Chile. Those pleadings were duly filed within the time-limits so prescribed.

8. By an Order of 27 April 2010, the Court authorized the submission of a Reply by Peru and a Rejoinder by Chile, and fixed 9 November 2010 and 11 July 2011 as the respective time-limits for the filing of those pleadings. The Reply and the Rejoinder were duly filed within the time-limits thus fixed.

9. Referring to Article 53, paragraph 1, of the Rules of Court, the Governments of Colombia, Ecuador and Bolivia asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties pursuant to that same provision, the Court decided to grant each of these requests. The Registrar duly communicated these decisions to the said Governments and to the Parties.

10. In accordance with Article 53, paragraph 2, of the Rules of Court, the Court, after having ascertained the views of the Parties, decided that copies of the pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings.

11. Public hearings were held between 3 and 14 December 2012, at which the Court heard the oral arguments and replies of: (…).

12. At the hearings, a Member of the Court put a question to the Parties, to which replies were given orally in accordance with Article 61, paragraph 4, of the Rules of Court.

13. In its Application, the following requests were made by Peru:

"Peru requests the Court to determine the course of the boundary between the maritime zones of the two States in accordance with international law… and to adjudge and declare that Peru possesses exclusive sovereign rights in the maritime area situated within the limit of 200 nautical miles from its coast but outside Chile's exclusive economic zone or continental shelf. The Government of Peru, further, reserves its right to supplement, amend or modify the present Application in the course of the proceedings."

14. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Peru,

in the Memorial and in the Reply:

"For the reasons set out [in Peru's Memorial and Reply], the Republic of Peru requests the Court to adjudge and declare that:

(1) The delimitation between the respective maritime zones between the Republic of Peru and the Republic of Chile, is a line starting at "Point Concordia" (defined as the intersection with the low-water mark of a 10-kilometre radius arc, having as its centre the first bridge over the River Lluta of the Arica-La Paz railway) and equidistant from the baselines of both Parties, up to a point situated at a distance of 200 nautical miles from those baselines, and (2) Beyond the point where the common maritime border ends, Peru is entitled to exercise exclusive sovereign rights over a maritime area lying out to a distance of 200 nautical miles from its baselines.

The Republic of Peru reserves its right to amend these submissions as the case may be in the course of the present proceedings."

On behalf of the Government of Chile,
in the Counter-Memorial and in the Rejoinder:
"Chile respectfully requests the Court to:
(a) dismiss Peru's claims in their entirety;
(b) adjudge and declare that:
  (i) the respective maritime zone entitlements of Chile and Peru have been fully delimited by agreement;
  (ii) those maritime zone entitlements are delimited by a boundary following the parallel of latitude passing through the most seaward boundary marker of the land boundary between Chile and Peru, known as Hito No. 1, having a latitude of 18¢X 21' 00" S under WGS 84 Datum; and
  (iii) Peru has no entitlement to any maritime zone extending to the south of that Parallel."

15. At the oral proceedings, the Parties presented the same submissions as those contained in their written pleadings.

I. GEOGRAPHY

16. Peru and Chile are situated in the western part of South America; their mainland coasts face the Pacific Ocean. Peru shares a land boundary with Ecuador to its north and with Chile to its south. In the area with which these proceedings are concerned, 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. The coasts of both Peru and Chile in that area are mostly uncomplicated and relatively smooth, with no distinct promontories or other distinguishing features.

Sketch-map No. 1

II. HISTORICAL BACKGROUND

17. Chile gained its independence from Spain in 1818 and Peru did so in 1821. At the time of independence, Peru and Chile were not neighbouring States. Situated between the two countries was the Spanish colonial territory of Charcas which, as from 1825, became the Republic of Bolivia. In 1879 Chile declared war on Peru and Bolivia, in what is known historically as the War of the Pacific. In 1883 hostilities between Chile and Peru formally came to an end under the Treaty of Ancon. Under its terms, Peru ceded to Chile the coastal province of Tarapaca; in addition, Chile gained possession of the Peruvian provinces of Tacna and Arica for a period of ten years on the basis of an agreement that after that period of time there would be a plebiscite to determine sovereignty over these provinces. After the signing of the truce between Bolivia and Chile in 1884 and of the 1904 Treaty of Peace and Friendship between them, the entire Bolivian coast became Chilean.

18. Chile and Peru failed to agree on the terms of the above-mentioned plebiscite. Finally, on 3 June 1929, following mediation attempts by the President of the United States of America, the two countries signed the Treaty for the Settlement of the Dispute regarding Tacna and Arica (hereinafter the "1929 Treaty of Lima") and its Additional Protocol, whereby they agreed that Tacna would be returned to Peru while Chile would retain Arica. The 1929 Treaty of Lima also fixed the land boundary between the two countries. Under Article 3 of that Treaty, the Parties agreed that a Mixed Commission of Limits should be constituted in order to determine and mark the agreed boundary using a series of markers ("hitos" in Spanish). In its 1930 Final Act, the 1929-1930 Mixed Commission recorded the precise locations of the 80 markers that it had placed on the ground to demarcate the land boundary.

19. In 1947 both Parties unilaterally proclaimed certain maritime rights extending 200 nautical miles from their coasts (hereinafter collectively the "1947 Proclamations"). The President of Chile issued a Declaration concerning his country's claim on 23 June 1947 (hereinafter the "1947 Declaration" or "Chile's 1947 Declaration", reproduced at paragraph 37 below). The President of Peru issued Supreme Decree No. 781, claiming the rights of his country, on 1 August 1947 (hereinafter the "1947 Decree" or "Peru's 1947 Decree", reproduced at paragraph 38 below).

20. In 1952, 1954 and 1967, Chile, Ecuador and Peru negotiated twelve instruments to which the Parties in this case make reference. Four were adopted in Santiago in August 1952 during the Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific (the Regulations for Maritime Hunting Operations in the Waters of the South Pacific; the Joint Declaration concerning Fishing Problems in the South Pacific; the Santiago Declaration; and the Agreement Relating to the Organization of the Permanent Commission of the Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific). Six others were adopted in Lima in December 1954 (the Complementary Convention to the Declaration of Sovereignty on the Two-Hundred-Mile Maritime Zone; the Convention on the System of Sanctions; the Agreement relating to Measures of Supervision and Control in the Maritime Zones of the Signatory Countries; the Convention on the Granting of Permits for the Exploitation of the Resources of the South Pacific; the Convention on the Ordinary Annual Meeting of the Permanent Commission for the South Pacific; and the Agreement Relating to a Special Maritime Frontier Zone). And, finally, two agreements relating to the functioning of the CPPS were signed in Quito in May 1967.

21. On 3 December 1973, the very day the Third United Nations Conference on the Law of the Sea began, the twelve instruments were submitted by the three signatory States to the United Nations Secretariat for registration under Article 102 of the Charter. The four 1952 instruments (including the Santiago Declaration) were registered on 12 May 1976 (United Nations, Treaty Series (UNTS), Vol. 1006, pp. 301, 315, 323 and 331, Registration Nos. I-14756 to I-14759). The United Nations Treaty Series specifies that the four 1952 treaties came into force on 18 August 1952 upon signature. The 1954 Special Maritime Frontier Zone Agreement was registered with the United Nations Secretariat on 24 August 2004 (UNTS, Vol. 2274, p. 527, Registration No. I-40521). The United Nations Treaty Series indicates that the 1954 Special Maritime Frontier Zone Agreement entered into force on 21 September 1967 by the exchange of instruments of ratification. With regard to the two 1967 agreements, the Secretariat was informed in 1976 that the signatory States had agreed not to insist upon the registration of these instruments, as they related to matters of purely internal organization.

Representatives of the three States also signed in 1955 and later ratified the Agreement for the Regulation of Permits for the Exploitation of the Resources of the South Pacific. That treaty was not, however, submitted to the United Nations for registration along with the other twelve instruments in 1973 or at any other time.

III. POSITIONS OF THE PARTIES

22. 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. 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 further relies on several agreements and subsequent practice as evidence

of that boundary. Chile 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.

23. Chile contends that the principle of *pacta sunt servanda* and the principle of stability of boundaries prevent any attempt to invite the Court to redraw a boundary that has already been agreed. Chile adds that there have been significant benefits to both Parties as a result of the stability of their long-standing maritime boundary. Peru argues that the delimitation line advocated by Chile is totally inequitable as it accords Chile a full 200-nautical-mile maritime extension, whereas Peru, in contrast, suffers a severe cut-off effect. Peru states that it is extraordinary for Chile to seek to characterize a boundary line, which accords Chile more than twice as much maritime area as it would Peru, as a stable frontier which is beneficial to Peru. Mercator Projection (18¢X 20' S)

Sketch-map No. 2

IV. WHETHER THERE IS AN AGREED MARITIME BOUNDARY

24. In order to settle the dispute before it, the Court must first ascertain whether an agreed maritime boundary exists, as Chile claims. In addressing this question, the Parties considered the significance of the 1947 Proclamations, the 1952 Santiago Declaration and various agreements concluded in 1952 and 1954. They also referred to the practice of the Parties subsequent to the 1952 Santiago Declaration. The Court will deal with each of these matters in turn.

1. The 1947 Proclamations of Chile and Peru

25. As noted above (see paragraph 19), in their 1947 Proclamations, Chile and Peru unilaterally proclaimed certain maritime rights extending 200 nautical miles from their respective coasts.

26. The Parties agree that the relevant historical background to these Proclamations involves a number of comparable proclamations by other States, namely the United States of America's two Proclamations of its policy with respect to both the natural resources of the subsoil and sea-bed of the continental shelf, and coastal fisheries in certain areas of the high seas, both dated 28 September 1945, the Mexican Declaration with Respect to Continental Shelf dated 29 October 1945 and the Argentinean Declaration Proclaiming Sovereignty over the Epicontinental Sea and the Continental Shelf dated 11 October 1946. Both Parties agree on the importance of fish and whale resources to their economies, submitting that the above-mentioned Proclamations by the United States of America placed increased pressure on the commercial exploitation of fisheries off the coast of the Pacific States of Latin America, thus motivating their 1947 Proclamations.

27. Beyond this background, the Parties present differing interpretations of both the content and legal significance of the 1947 Proclamations.

28. According to Peru, Chile's 1947 Declaration was an initial and innovative step, whereby it asserted an alterable claim to jurisdiction, dependent on the adoption of further measures; nothing in this Declaration indicated any intention, on the part of Chile, to address the question of lateral maritime boundaries with neighbouring States. Peru argues that its own 1947 Decree is similarly provisional, representing an initial step and not purporting to fix definitive limits of Peruvian jurisdiction. Peru contends that although its 1947 Decree refers to the Peruvian zone of control and protection as "the area covered between the coast and an imaginary parallel line to it at a distance of two hundred (200) nautical miles measured following the line of the geographical parallels", such reference simply described the manner in which the seaward limits of the maritime zone would be drawn, with there being no intention to set any lateral boundaries with neighbouring States. Peru further considers that, according to terminology at the relevant time, the language of "sovereignty" in its 1947 Decree referred simply to rights over resources.

29. By contrast, Chile understands the Parties' 1947 Proclamations as more relevant, considering them to be "concordant unilateral proclamations, each claiming sovereignty to a distance of 200 nautical miles", being "substantially similar in form, content and effect". Chile observes that each of the Parties proclaims national sovereignty over its adjacent continental shelf, as well as in respect of the water column, indicating also a right to extend the outer limit of its respective maritime zone.

30. Peru contests Chile's description of the 1947 Proclamations as "concordant", emphasizing that, although Chile's 1947 Declaration and Peru's 1947 Decree were closely related in time and object, they were not co-ordinated or agreed between the Parties.

31. Chile further argues that the 1947 Proclamations set clear boundaries of the maritime zones referred to therein. Chile contends that the method in Peru's 1947 Decree of using a geographical parallel to measure the outward limit of the maritime zone also necessarily determines the northern and southern lateral limits of such zone along such line of geographical parallel. According to Chile, its own references to a "perimeter" and to the "mathematical parallel" in its 1947 Declaration could be similarly understood as indicating that a trace parallele method was used to indicate the perimeter of the claimed Chilean zone.

32. Chile adds that parallels of latitude were also used in the practice of American States. Peru responds that the use of parallels of latitude by other American States described by Chile are not instances of the use of parallels of latitude as international maritime boundaries.

33. For Chile, the primary significance of the 1947 Proclamations is as antecedents to the 1952 Santiago Declaration. Chile also refers to the 1947 Proclamations as circumstances of the conclusion of the 1952 Santiago Declaration and the 1954 Special Maritime Frontier Zone Agreement, in accordance with Article 32 of the Vienna Conven-

tion on the Law of Treaties. Chile maintains that the 1947 Proclamations, in particular Peru' s use of a "line of the geographic parallels" to measure its maritime projection, rendered the boundary delimitation uncontroversial in 1952, as there could be no less controversial boundary delimitation than when the claimed maritime zones of two adjacent States abut perfectly but do not overlap. However, Chile further clarifies that it does not consider that the 1947 Proclamations themselves established a maritime boundary between the Parties.

34. Peru questions the Chilean claim that the adjacent maritime zones abut perfectly by pointing out that the 1947 Proclamations do not stipulate co-ordinates or refer to international boundaries. Peru's view on the connection between the 1947 Proclamations and the 1952 Santiago Declaration is that the 1947 Proclamations cannot constitute circumstances of the 1952 Santiago Declaration's conclusion in the sense of Article 32 of the Vienna Convention on the Law of Treaties as they pre-date the conclusion of the 1952 Santiago Declaration by five years. Peru also questions Chile's assertion that the 1947 Proclamations constitute circumstances of the conclusion of the 1954 Special Maritime Frontier Zone Agreement.

35. The Parties further disagree on the legal nature of the 1947 Proclamations, particularly Chile's 1947 Declaration. Chile contends that the 1947 Proclamations each had immediate effect, without the need for further formality or enacting legislation. Peru denies this, contending rather that Chile's 1947 Declaration did not have the nature of a legal act. It points to the fact that the 1947 Declaration was published only in a daily newspaper and not in the Official Gazette of Chile.

36. Chile'¦s response to these arguments is that the status of its 1947 Declaration under domestic law is not determinative of its status under international law, emphasizing that it was an international claim made by the President of Chile and addressed to the international community. Chile points out that the Parties exchanged formal notifications of their 1947 Proclamations, arguing that the lack of protest thereto demonstrates acceptance of the validity of the other's claim to sovereignty, including in relation to the perimeter. This was challenged by Peru.

37. The relevant paragraphs of Chile's 1947 Declaration provide as follows:

"Considering:

1. That the Governments of the United States of America, of Mexico and of the Argentine Republic, by presidential declarations made on 28 September 1945, 29 October 1945, and 11 October 1946, respectively,…
2. That they have explicitly proclaimed the rights of their States to protect, preserve, control and inspect fishing enterprises, with the object of preventing illicit activities threatening to damage or destroy the considerable natural riches of this kind contained in the seas adjacent to their coasts, and which are indispensable to the welfare and progress of their respective peoples; and that the justice of such claims is indisputable;
3. That it is manifestly convenient, in the case of the Chilean Republic, to issue a similar proclamation of sovereignty, not only by the fact of possessing and having

> already under exploitation natural riches essential to the life of the nation and contained in the continental shelf, such as the coal-mines, which are exploited both on the mainland and under the sea, but further because, in view of its topography and the narrowness of its boundaries, the life of the country is linked to the sea and to all present and future natural riches contained within it, more so than in the case of any other country;…

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

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

(3) The demarcation of the protection zones for whaling and deep sea fishery in the continental and island seas under the control of the Government of Chile will be made in accordance with this declaration of sovereignty at any moment which the Government may consider convenient, such demarcation to be ratified, amplified, or modified in any way to conform with the knowledge, discoveries, studies and interests of Chile as required in the future. Protection and control is hereby declared immediately over all the seas contained within the perimeter formed by the coast and the mathematical parallel projected into the sea at a distance of 200 nautical miles from the coasts of Chilean territory. This demarcation will be calculated to include the Chilean islands, indicating a maritime zone contiguous to the coasts of the said islands, projected parallel to these islands at a distance of 200 nautical miles around their coasts.

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

38. The relevant paragraphs of Peru's 1947 Decree provide as follows:

"The President of the Republic

Considering:…

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

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

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

With the advisory vote of the Cabinet:

Decrees:

1. To declare that national sovereignty and jurisdiction are extended to the submerged continental or insular shelf adjacent to the continental or insular shores of national territory, whatever the depth and extension of this shelf may be.
2. National sovereignty and jurisdiction are exercised as well over the sea adjoining the shores of national territory whatever its depth and in the extension necessary to reserve, protect, maintain and utilize natural resources and wealth of any kind which may be found in or below those waters.
3. As a result of previous declarations the State reserves the right to establish the limits of the zones of control and protection of natural resources in continental or insular seas which are controlled by the Peruvian Government and to modify such limits in accordance with supervening circumstances which may originate as a result of further discoveries, studies or national interests which may become apparent in the future and at the same time declares that it will exercise the same control and protection on the seas adjacent to the Peruvian coast over the area covered between the coast and an imaginary parallel line to it at a distance of two hundred (200) nautical miles measured following the line of the geographical parallels. As regards islands pertaining to the Nation, this demarcation will be traced to include the sea area adjacent to the shores of these islands to a distance of two hundred (200) nautical miles, measured from all points on the contour of these islands.
4. The present declaration does not affect the right to free navigation of ships of all nations according to international law."

39. The Court notes that the Parties are in agreement that the 1947 Proclamations do not themselves establish an international maritime boundary. The Court therefore will consider the 1947 Proclamations only for the purpose of ascertaining whether the texts evidence the Parties' understanding as far as the establishment of a future maritime boundary between them is concerned.

40. The Court observes that paragraph 3 of Chile's 1947 Declaration referred to a "mathematical parallel" projected into the sea to a distance of 200 nautical miles from the Chilean coast. Such a mathematical parallel limited the seaward extent of the projection, but did not fix its lateral limits. The 1947 Declaration nonetheless stated that it concerned the continental shelf and the seas "adjacent" to the Chilean coasts. It implied the need to fix, in the future, the lateral limits of the jurisdiction that it was seeking to

establish within a specified perimeter. The Court further notes that Peru's 1947 Decree, in paragraph 3, referred to "geographical parallels" in identifying its maritime zone. The description of the relevant maritime zones in the 1947 Proclamations appears to use a trace parallele method. However, the utilization of such method is not sufficient to evidence a clear intention of the Parties that their eventual maritime boundary would be a parallel.

41. The Court recalls that paragraph 3 of Chile's 1947 Declaration provides for the establishment of protective zones for whaling and deep sea fishery, considering that these may be modified in any way "to conform with the knowledge, discoveries, studies and interests of Chile as required in the future". This conditional language cannot be seen as committing Chile to a particular method of delimiting a future lateral boundary with its neighbouring States; rather, Chile's concern relates to the establishment of a zone of protection and control so as to ensure the exploitation and preservation of natural resources.

42. The language of Peru's 1947 Decree is equally conditional. In paragraph 3, Peru reserves the right to modify its "zones of control and protection" as a result of "national interests which may become apparent in the future".

43. In view of the above, 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.

44. Having reached this conclusion, the Court does not need to address Chile's argument concerning the relevance of the communication of the 1947 Proclamations inter se and Peru's response to that argument. The Court notes, however, that both Peru and Chile simply acknowledged receipt of each other's notification without making any reference to the possible establishment of an international maritime boundary between them.

2. The 1952 Santiago Declaration

45. As noted above (see paragraph 20), the Santiago Declaration was signed by Chile, Ecuador and Peru during the 1952 Conference held in Santiago de Chile on the Exploitation and Conservation of the Marine Resources of the South Pacific.

46. According to Chile, the 1952 Santiago Declaration has been a treaty from its inception and was always intended by its signatories to be legally binding. Chile further notes that the United Nations Treaty Series indicates that the 1952 Santiago Declaration entered into force upon signature on 18 August 1952, with there being no record of any objection by Peru to such indication.

47. Peru considers that the 1952 Santiago Declaration was not conceived as a treaty, but rather as a proclamation of the international maritime policy of the three States. Peru claims that it was thus "declarative" in character, but accepts that it later acquired

the status of a treaty after being ratified by each signatory (Chile in 1954, Ecuador and Peru in 1955) and registered as such with the United Nations Secretariat on 12 May 1976, pursuant to Article 102, paragraph 1, of the Charter of the United Nations.

48. In view of the above, the Court observes that it is no longer contested that the 1952 Santiago Declaration is an international treaty. The Court's task now is to ascertain whether it established a maritime boundary between the Parties.

49. The 1952 Santiago Declaration provides as follows:

"1. Governments have the obligation to ensure for their peoples the necessary conditions of subsistence, and to provide them with the resources for their economic development.
2. Consequently, they are responsible for the conservation and protection of their natural resources and for the regulation of the development of these resources in order to secure the best possible advantages for their respective countries.
3. Thus, it is also their duty to prevent any exploitation of these resources, beyond the scope of their jurisdiction, which endangers the existence, integrity and conservation of these resources to the detriment of the peoples who, because of their geographical situation, possess irreplaceable means of subsistence and vital economic resources in their seas.

In view of the foregoing considerations, the Governments of Chile, Ecuador and Peru, determined to conserve and safeguard for their respective peoples the natural resources of the maritime zones adjacent to their coasts, formulate the following

Declaration:

I. The geological and biological factors which determine the existence, conservation and development of marine fauna and flora in the waters along the coasts of the countries making the Declaration are such that the former extension of the territorial sea and the contiguous zone are inadequate for the purposes of the conservation, development and exploitation of these resources, to which the coastal countries are entitled.

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

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

IV. 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.

V. This declaration shall be without prejudice to the necessary limitations to the exercise of sovereignty and jurisdiction established under international law to allow innocent and inoffensive passage through the area indicated for ships of all nations.

VI. For the application of the principles contained in this Declaration, the Governments of Chile, Ecuador and Peru hereby announce their intention to sign agreements or conventions which shall establish general norms to regulate and protect hunting and fishing within the maritime zone belonging to them, and to regulate and co-ordinate the exploitation and development of all other kinds of products or natural resources existing in these waters which are of common interest."

50. Peru asserts that the 1952 Santiago Declaration lacks characteristics which might be expected of a boundary agreement, namely, an appropriate format, a definition or description of a boundary, cartographic material and a requirement for ratification. Chile disagrees with Peru's arguments concerning the characteristics of boundary agreements, pointing out that a treaty effecting a boundary delimitation can take any form.

51. According to Chile, it follows from paragraph IV of the 1952 Santiago Declaration that the maritime boundary between neighbouring States parties is the parallel of latitude passing through the point at which the land boundary between them reaches the sea. Chile contends that paragraph IV delimits both the general and insular maritime zones of the States parties, arguing that the reference to islands in this provision is a specific application of a generally agreed rule, the specification of which is explained by the particular importance of islands to Ecuador's geographical circumstances. In support of this claim, Chile relies upon the Minutes of the 1952 Conference dated 11 August 1952, asserting that the Ecuadorean delegate requested clarification that the boundary line of the jurisdictional zone of each country be the respective parallel from the point at which the border of the countries touches or reaches the sea and that all States expressed their mutual consent to such an understanding. Chile argues that such an understanding, as recorded in the Minutes, constitutes an agreement relating to the conclusion of the 1952 Santiago Declaration, within the meaning of Article 31, paragraph 2 (a) of the Vienna Convention on the Law of Treaties. Although Chile recognizes that the issue of islands was of particular concern to Ecuador, it also stresses that there are relevant islands in the vicinity of the Peru-Chile border.

52. Chile maintains that the relationship between general and insular maritime zones must be understood in light of the fact that the delimitation of insular zones along a line of parallel is only coherent and effective if there is also a general maritime delimitation along such parallel. Further, Chile points out that, in order to determine if an island is situated less than 200 nautical miles from the general maritime zone of another State party to the 1952 Santiago Declaration, the perimeter of such general maritime zone must have already been defined.

53. Peru argues that in so far as the continental coasts of the States parties are concerned, the 1952 Santiago Declaration simply claims a maritime zone extending

to a minimum distance of 200 nautical miles, addressing only seaward and not lateral boundaries. In Peru's view, paragraph IV of the 1952 Santiago Declaration refers only to the entitlement generated by certain islands and not to the entitlement generated by continental coasts, with the issue of islands being relevant only between Ecuador and Peru, not between Peru and Chile. Peru contends that even if some very small islands exist in the vicinity of the Peru-Chile border these are immediately adjacent to the coast and do not have any effect on maritime entitlements distinct from the coast itself, nor were they of concern during the 1952 Conference.

54. Peru rejects Chile's argument that a general maritime delimitation must be assumed in paragraph IV so as to make the reference to insular delimitation effective. It also questions that a maritime boundary could result from an alleged practice implying or presupposing its existence. Peru argues that, if it were true that parallels had been established as international maritime boundaries prior to 1952, there would have been no need to include paragraph IV as such boundaries would have already settled the question of the extent of the maritime entitlements of islands. Peru further claims that the purpose of paragraph IV is to provide a protective zone for insular maritime entitlements so that even if an eventual maritime delimitation occurred in a manner otherwise detrimental to such insular entitlements, it could only do so as far as the line of parallel referred to therein. Finally, Peru contests Chile's interpretation of the Minutes of the 1952 Conference, arguing also that these do not constitute any form of "recorded agreement" but could only amount to *travaux preparatoires*.

55. According to Chile, the object and purpose of the 1952 Santiago Declaration can be stated at varying levels of specificity. Its most generally stated object and purpose is "to conserve and safeguard for their respective peoples the natural resources of the maritime zones adjacent to [the parties'] coasts". It also has a more specific object and purpose, namely to set forth zones of "exclusive sovereignty and jurisdiction". This object and purpose is naturally concerned with identifying the physical perimeter of each State's maritime zone within which such sovereignty and jurisdiction would be exercised. Chile further emphasizes that, although the 1952 Santiago Declaration constitutes a joint proclamation of sovereignty, it is made by each of the three States parties, each claiming sovereignty over a maritime zone which is distinct from that claimed by the other two.

56. Peru agrees with Chile to the extent that the 1952 Santiago Declaration involves joint action to declare the maritime rights of States parties to a minimum distance of 200 nautical miles from their coasts so as to protect and preserve the natural resources adjacent to their territories. Yet, Peru focuses on the 1952 Conference's purpose as being to address collectively the problem of whaling in South Pacific waters, arguing that, in order to do so, it was necessary that "between them" the States parties police the 200-nautical-mile zone effectively. According to Peru, the object and purpose of the 1952 Santiago Declaration was not the division of fishing grounds between its States parties, but to create a zone functioning "as a single biological unit" -an exercise of regional solidarity- designed to address the threat posed by foreign whaling. Thus, Peru stresses that the 1952 Santiago Declaration does not include any stipulation as to how the States parties' maritime zones are delimited from each other.

57. The Court is required to analyse the terms of the 1952 Santiago Declaration in accordance with the customary international law of treaty interpretation, as reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (see Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II), p. 812, para. 23; Territorial Dispute (Libyan Arab Jamahiriya/ Chad), Judgment, I.C.J. Reports - 27 - 1994, pp. 21-22, para. 41). The Court applied these rules to the interpretation of treaties which pre-date the Vienna Convention on the Law of Treaties (Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2009, p. 237, para. 47; Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002, pp. 645-646, paras. 37-38; Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Reports 1999 (II), p. 1059, para. 18).

58. The Court commences by considering the ordinary meaning to be given to the terms of the 1952 Santiago Declaration in their context, in accordance with Article 31, paragraph 1, of the Vienna Convention on the Law of Treaties. The 1952 Santiago Declaration does not make express reference to the delimitation of maritime boundaries of the zones generated by the continental coasts of its States parties. This is compounded by the lack of such information which might be expected in an agreement determining maritime boundaries, namely, specific co-ordinates or cartographic material. Nevertheless, the 1952 Santiago Declaration contains certain elements (in its paragraph IV) which are relevant to the issue of maritime delimitation (see paragraph 60 below).

59. The Court notes that in paragraph II, the States parties "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". This provision establishes only a seaward claim and makes no reference to the need to distinguish the lateral limits of the maritime zones of each State party. Paragraph III states that "[t]he exclusive jurisdiction and sovereignty over this maritime zone shall also encompass exclusive sovereignty and jurisdiction over the seabed and the subsoil thereof". Such a reference to jurisdiction and sovereignty does not necessarily require any delimitation to have already occurred. Paragraph VI expresses the intention of the States parties to establish by agreement in the future general norms of regulation and protection to be applied in their respective maritime zones. Accordingly, although a description of the distance of maritime zones and reference to the exercise of jurisdiction and sovereignty might indicate that the States parties were not unaware of issues of general delimitation, the Court concludes that neither paragraph II nor paragraph III refers explicitly to any lateral boundaries of the proclaimed 200-nautical-mile maritime zones, nor can the need for such boundaries be implied by the references to jurisdiction and sovereignty.

60. The Court turns now to paragraph IV of the 1952 Santiago Declaration. The first sentence of paragraph IV specifies that the proclaimed 200-nautical-mile maritime zones apply also in the case of island territories. The second sentence of that paragraph addresses the situation where an island or group of islands of one State party is located less than 200 nautical miles from the general maritime zone of another State party. In

this situation, the limit of the respective zones shall be the parallel at the point at which the land frontier of the State concerned reaches the sea. The Court observes that this provision, the only one in the 1952 Santiago Declaration making any reference to the limits of the States parties' maritime zones, is silent regarding the lateral limits of the maritime zones which are not derived from island territories and which do not abut them.

61. The Court is not convinced by Chile's argument that paragraph IV can be understood solely if it is considered to delimit not only insular maritime zones but also the entirety of the general maritime zones of the States parties. The ordinary meaning of paragraph IV reveals a particular interest in the maritime zones of islands which may be relevant even if a general maritime zone has not yet been established. In effect, it appears that the States parties intended to resolve a specific issue which could obviously create possible future tension between them by agreeing that the parallel would limit insular zones.

62. In light of the foregoing, the Court concludes that the ordinary meaning of paragraph IV, read in its context, goes 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.

63. The Court now turns to consider the object and purpose of the 1952 Santiago Declaration. It recalls that both Parties state such object and purpose narrowly: Peru argues that the Declaration is primarily concerned with addressing issues of large-scale whaling, whereas Chile argues that it can be most specifically understood as concerned with identifying the perimeters of the maritime zone of each State party. The Court observes that the Preamble of the 1952 Santiago Declaration focuses on the conservation and protection of the necessary natural resources for the subsistence and economic development of the peoples of Chile, Ecuador and Peru, through the extension of the maritime zones adjacent to their coasts.

64. The Court further considers that it is not necessary for it to address the existence of small islands located close to the coast in the region of the Peru-Chile land boundary. The case file demonstrates that the issue of insular zones in the context of the 1952 Santiago Declaration arose from a concern expressed by Ecuador. It is equally clear from the case file that the small islands do not appear to have been of concern to the Parties. As stated by Chile in its Rejoinder, referring to these small islands, "[n]one of them was mentioned in the negotiating record related to the 1952 Santiago Declaration… The only islands that were mentioned in the context of the Santiago Declaration were Ecuador's Galapagos Islands." Peru did not contest this.

65. The Court recalls Chile's argument, based on Article 31, paragraph 2 (a), of the Vienna Convention on the Law of Treaties, that the Minutes of the 1952 Conference constitute an "agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty". The Court considers that the Minutes of the 1952 Conference summarize the discussions leading to the adoption of the 1952 Santiago Declaration, rather than record an agreement of the negotiating States. Thus, they are more appropriately characterized as *travaux preparatoires* which constitute

supplementary means of interpretation within the meaning of Article 32 of the Vienna Convention on the Law of Treaties.

66. In light of the above, the Court does not need, in principle, to resort to supplementary means of interpretation, such as the *travaux preparatoires* of the 1952 Santiago Declaration and the circumstances of its conclusion, to determine the meaning of that Declaration. However, as in other cases (see, for example, Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002, p. 653, para. 53; Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995, p. 21, para. 40; Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994, p. 27, para. 55), the Court has considered the relevant material, which confirms the above interpretation of the 1952 Santiago Declaration.

67. Chile's original proposal presented to the 1952 Conference provided as follows: "The zone indicated comprises all waters within the perimeter formed by the coasts of each country and a mathematical parallel projected into the sea to 200 nautical miles away from the mainland, along the coastal fringe. In the case of island territories, the zone of 200 nautical miles will apply all around the island or island group. If an island or group of islands belonging to one of the countries making the declaration is situated less than 200 nautical miles from the general maritime zone belonging to another of those countries, according to what has been established in the first paragraph of this article, the maritime zone of the said island or group of islands shall be limited, in the corresponding part, to the distance that separates it from the maritime zone of the other State or country." The Court notes that this original Chilean proposal appears intended to effect a general delimitation of the maritime zones along lateral lines. However, this proposal was not adopted.

68. Further, the Minutes of the 1952 Conference indicate that the delegate for Ecuador: "observed that it would be advisable to provide more clarity to article 3 [which became paragraph IV of the final text of the 1952 Santiago Declaration], in order to avoid any error in the interpretation of the interference zone in the case of islands, and suggested that the declaration be drafted on the basis that the boundary line of the jurisdictional zone of each country be the respective parallel from the point at which the frontier of the countries touches or reaches the sea". According to the Minutes, this proposition met with the agreement of all of the delegates. Ecuador's intervention, with which the Parties agreed, is limited in its concern to clarification "in the case of islands". Thus the Court is of the view that it can be understood as saying no more than that which is already stated in the final text of paragraph IV. The Court considers from the foregoing that the *travaux preparatoires* confirm its conclusion that the 1952 Santiago Declaration did not effect a general maritime delimitation.

69. Nevertheless, various factors mentioned in the preceding paragraphs, such as the original Chilean proposal 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 will return to this matter later.

70. The Court has concluded, contrary to Chile's submissions, that Chile and Peru did not, by adopting the 1952 Santiago Declaration, agree to the establishment of a lateral maritime boundary between them along the line of latitude running into the Pacific Ocean from the seaward terminus of their land boundary. However, in support of its claim that that line constitutes the maritime boundary, Chile also invokes agreements and arrangements which it signed later with Ecuador and Peru, and with Peru alone.

3. The various 1954 Agreements

71. Among the agreements adopted in 1954, Chile emphasizes, in particular, the Complementary Convention to the 1952 Santiago Declaration and the Special Maritime Frontier Zone Agreement. It puts the meetings that led to those agreements and the agreements themselves in the context of the challenges which six maritime powers had made to the 1952 Santiago Declaration in the period running from August to late October 1954 and of the planned whale hunting by a fleet operating under the Panamanian flag.

72. The meeting of the CPPS, preparatory to the Inter-State conference of December 1954, was held between 4 and 8 October 1954. The provisional agenda items correspond to five of the six agreements which were drafted and adopted at the December Inter-State Conference: the Complementary Convention to the 1952 Santiago Declaration, the Convention on the System of Sanctions, the Agreement on the Annual Meeting of the CPPS, the Convention on Supervision and Control, and the Convention on the Granting of Permits for the Exploitation of the Resources of the South Pacific.

73. The 1954 Special Maritime Frontier Zone Agreement also resulted from the meetings that took place in 1954. In addition to considering the matters listed on the provisional agenda described above, the October 1954 meeting of the CPPS also considered a proposal by the Delegations of Ecuador and Peru to establish 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". The Permanent Commission approved the proposal unanimously "and, consequently, entrusted its Secretariat-General to transmit this recommendation to the signatory countries so that they put into practice this norm of tolerance on fishing activities". As a consequence, at the inaugural session of "The Second Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific", the proposed Agreement appeared in the agenda as the last of the six Agreements to be considered and signed in December 1954. The draft text relating to the proposal to establish a "neutral zone" along the parallel was then amended in certain respects. The term "neutral zone" was replaced with the term "special maritime frontier zone" and the reference to "the parallel which passes through the point of the coast that signals the boundary between the two countries" was replaced with "the parallel which constitutes the maritime boundary between the two countries". This is the language that appears in the first paragraph of the final text of the 1954 Special Maritime Frontier Zone Agreement, which was adopted along with the other five agreements referred to in the preceding paragraph. All of the agreements included a standard clause, added late in the drafting process without any explanation recorded in the Minutes. According to this clause, the provisions contained in the agreements were "deemed to be an integral and supplementary part" of the resolutions and agreements adopted in 1952 and were "not

in any way to abrogate" them. Of these six Agreements only the 1954 Complementary Convention and the 1954 Special Maritime Frontier Zone Agreement were given any real attention by the Parties in the course of these proceedings, except for brief references by Chile to the Supervision and Control Convention (see paragraph 78 below). The Court notes that the 1954 Special Maritime Frontier Zone Agreement is still in force.

A. The Complementary Convention to the 1952 Santiago Declaration

74. According to Chile, "the main instrument" prepared at the 1954 Inter-State Conference was the Complementary Convention, "[t]he primary purpose [of which] was to reassert the claim of sovereignty and jurisdiction that had been made two years earlier in Santiago and to defend jointly the claim against protests by third States". It quotes its Foreign Minister speaking at the inaugural session of the 1954 CPPS Meeting: "The right to proclaim our sovereignty over the sea zone that extends to two hundred miles from the coast is thus undeniable and inalienable. We gather now to reaffirm our decision to defend, whatever the cost, this sovereignty and to exercise it in accordance with the high national interests of the signatory countries to the Declaration… We strongly believe that, little by little, the legal statement that has been formulated by our countries into the 1952 Agreement [the Santiago Declaration] will find its place in International Law until it is accepted by all Governments that wish to preserve, for mankind, resources that today are ruthlessly destroyed by the unregulated exercise of exploitative activities that pursue diminished individual interests and not collective needs."

75. Peru similarly contends that the purpose of the 1954 Complementary Convention was to reinforce regional solidarity in the face of opposition from third States to the 200-nautical-mile claim. It observes that in 1954, as in 1952, the primary focus of the three States was on maintaining a united front towards third States, "rather than upon the development of an internal legal regime defining their rights *inter se*". It also contends that the 1954 instruments were adopted in the context of regional solidarity *vis-a-vis* third States and that they were essentially an integral part of the agreements and resolutions adopted in 1952. The Inter-State Conference was in fact held less than a month after the Peruvian Navy, with the co-operation of its air force, had seized vessels of the Onassis whaling fleet, under the Panamanian flag, more than 100 nautical miles off shore (for extracts from the Peruvian Judgment imposing fines see American Journal of International Law, 1955, Vol. 49, p. 575). Peru notes that when it rejected a United Kingdom protest against the seizure of the Onassis vessels, the Chilean Foreign Minister sent a congratulatory message to his Peruvian counterpart - according to Peru this was "an indication of the regional solidarity which the zone embodied". In its Reply, Peru recalls Chile's characterization in its Counter-Memorial of the 1954 Complementary Convention as "the main instrument" prepared at the 1954 Inter-State Conference.

76. The Parties also refer to the agreed responses which they made, after careful preparation in the first part of 1955, to the protests made by maritime powers against the 1952 Santiago Declaration. Those responses were made in accordance with the spirit of the Complementary Convention even though Chile was not then or later a party to it. Similar co-ordinated action was taken in May 1955 in response to related proposals made by the United States of America.

77. 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 CPPS 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 to assert, particularly against the major maritime powers, their claim of sovereignty and jurisdiction made jointly in 1952. It was also designed to help prepare their common defence of the claim against the protests by those States, which was the subject-matter of the second agenda item of the 1954 Inter-State Conference. 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.

B. The Agreement relating to Measures of Supervision and Control of the Maritime Zones of the Signatory Countries

78. Chile 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. It quotes the first and second articles:

"First

It shall be the function of each signatory country to supervise and control the exploitation of the resources in its Maritime Zone by the use of such organs and means as it considers necessary.

Second

The supervision and control referred to in article one shall be exercised by each country exclusively in the waters of its jurisdiction." (Emphasis added by Chile.) Chile contends that the second article proceeds on the basis that each State's maritime zone had been delimited. Peru made no reference to the substance of this Agreement. Chile also referred in this context to the 1955 Agreement for the Regulation of Permits for Exploitation of the Resources of the South Pacific (see paragraph 21 above) and to its 1959 Decree providing for that regulation.

79. The Court considers that at this early stage there were at least in practice distinct maritime zones in which each of the three States might, in terms of the 1952 Santiago Declaration, take action as indeed was exemplified by the action taken by Peru against the Onassis whaling fleet shortly before the Lima Conference; other instances of enforcement by the two Parties are discussed later. However the Agreements on Supervision and Control and on the Regulation of Permits give no indication about the location or nature of boundaries of the zones. On the matter of boundaries, the Court now turns to the 1954 Special Maritime Frontier Zone Agreement.

C. The Agreement relating to a Special Maritime Frontier Zone

80. The Preamble to the 1954 Special Maritime Frontier Zone Agreement reads as follows: "Experience has shown that innocent and inadvertent violations of the maritime frontier ['la frontera marítima'] between adjacent States occur frequently because small vessels manned by crews with insufficient knowledge of navigation or not equipped

with the necessary instruments have difficulty in determining accurately their position on the high seas;

The application of penalties in such cases always produces ill-feeling in the fishermen and friction between the countries concerned, which may affect adversely the spirit of co-operation and unity which should at all times prevail among the countries signatories to the instruments signed at Santiago; and It is desirable to avoid the occurrence of such unintentional infringements, the consequences of which affect principally the fishermen."

81. The substantive provisions of the Agreement read as follows:

"1. A special zone is hereby established, at a distance of ['a partir de'] 12 nautical miles from the coast, extending to a breadth of 10 nautical miles on either side of the parallel which constitutes the maritime boundary ['el límite marítimo'] between the two countries.

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

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

Article 4 is the standard provision, included in all six of the 1954 Agreements, deeming it to be "an integral and supplementary part" of the 1952 instruments which it was not in any way to abrogate (see paragraph 73 above).

82. According to Chile, the 1954 Special Maritime Frontier Zone Agreement was "the most relevant instrument adopted at the December 1954 Conference". Its "basic predicate" was that the three States "already had lateral boundaries, or 'frontiers,' in place between them". Chile continues, citing the Judgment in the case concerning Territorial Dispute (Libyan Arab Jamahiriya/Chad), that in the 1954 Special Maritime Frontier Zone Agreement "the existence of a determined frontier was accepted and acted upon" (I.C.J. Reports 1994, p. 35, para. 66). It points out that Article 1 uses the present tense, referring to a maritime boundary already in existence, and the first recital indicates that it was violations of that existing boundary that prompted the Agreement.

83. Peru contends (1) that the Agreement was applicable only to Peru's northern maritime border, that is, with Ecuador, and not also to the southern one, with Chile; (2) that Chile's delay in ratifying (in 1967) and registering (in 2004) the Agreement shows that it did not regard it as of major importance such as establishing a maritime boundary; and (3) that the Agreement had a very special and temporary purpose and that the Parties were claiming a limited functional jurisdiction. Peru in its written pleadings, in support of its contention that the 1954 Special Maritime Frontier Zone Agreement applied only to its boundary with Ecuador and not to that with Chile, said that the "rather opaque formula" -the reference to the parallel in Article 1, introduced on the proposal of Ecuador- referred to only one parallel between two countries; it seems clear, Peru says, that the focus was on the waters between Peru and Ecuador.

84. With regard to Peru's first argument, Chile in reply points out that the 1954 Special Maritime Frontier Zone Agreement has three States parties and that the ordinary meaning of "the two countries" in Article 1 is a reference to the States on either side of their shared maritime boundary. Chile notes that there is no qualification of the "maritime frontier" (in the Preamble), nor is there any suggestion that the term "adjacent States" refers only to Ecuador and Peru. Chile also points out that in 1962 Peru complained to Chile about "the frequency with which Chilean fishing vessels have trespassed into Peruvian waters", stating that "the Government of Peru, taking strongly into account the sense and provisions of 'the Agreement'" wished that the Government of Chile take certain steps particularly through the competent authorities at the port of Arica. As Chile noted, Peru did not at that stage make any reference to the argument that the 1954 Special Maritime Frontier Zone Agreement applied only to its northern maritime boundary.

85. In the view of the Court, there is nothing at all in the terms of the 1954 Special Maritime Frontier Zone Agreement which would limit it only to the Ecuador-Peru maritime boundary. Moreover Peru did not in practice accord it that limited meaning which would preclude its application to Peru's southern maritime boundary with Chile. The Court further notes that the 1954 Special Maritime Frontier Zone Agreement was negotiated and signed by the representatives of all three States, both in the Commission and at the Inter-State Conference. All three States then proceeded to ratify it. They included it among the twelve treaties which they jointly submitted to the United Nations Secretariat for registration in 1973 (see paragraph 21 above).

86. With regard to Peru's second argument, Chile responds by pointing out that delay in ratification is common and contends that of itself the delay in ratification has no consequence for the legal effect of a treaty once it has entered into force. Further, it submits that the fact that registration of an Agreement is delayed is of no relevance.

87. The Court is of the view that Chile's delay in ratifying the 1954 Special Maritime Frontier Zone Agreement and submitting it for registration does not support Peru's argument that Chile considered that the Agreement lacked major importance. In any event, this delay has no bearing on the scope and effect of the Agreement. Once ratified by Chile the Agreement became binding on it. In terms of the argument about Chile's delay in submitting the Agreement for registration, the Court recalls that, in 1973, all three States signatory to the 1952 and 1954 treaties, including the 1954 Special Maritime Frontier Zone Agreement, simultaneously submitted all of them for registration (see paragraphs 20 to 21 above).

88. With regard to Peru's third argument that the 1954 Special Maritime Frontier Zone Agreement had a special and temporary purpose and that the Parties were claiming a limited functional jurisdiction, Chile's central contention is that the "basic predicate" of the Agreement was that the three States "already had lateral boundaries, or 'frontiers', in place between them" (see paragraph 82 above). The reference in the title of the Agreement to a Special Maritime Frontier Zone and in the recitals to violations of the maritime frontier between adjacent States demonstrates, Chile contends, that a maritime frontier or boundary already existed when the three States concluded the

Agreement in December 1954. The granting to small vessels of the benefit of a zone of tolerance was, in terms of the Preamble, intended to avoid "friction between the countries concerned, which may affect adversely the spirit of co-operation and unity which should at all times prevail among the countries signatories to the instruments signed at Santiago". According to Chile, this was an inter-State problem and "not a problem relating to itinerant fishermen". The States wished to eliminate obstacles to their complete co-operation in defence of their maritime claims. Chile emphasizes that Article 1, the primary substantive provision, is in the present tense: the ten-nautical-mile zones are being created to the north and south of a maritime boundary which already exists. Article 2, it says, also supports its position. The "accidental presence" in that zone of the vessels referred to in the Agreement is not considered a "violation" of the adjacent State's maritime zone. Chile claims that although its ratification of the 1954 Special Maritime Frontier Zone Agreement came some time after its signature, the boundary whose existence was acknowledged and acted upon was already in place throughout the period leading to its ratification.

89. According to Peru, the aim of the 1954 Special Maritime Frontier Zone Agreement "was narrow and specific", establishing a "zone of tolerance" for small and ill-equipped fishing vessels. Defining that zone by reference to a parallel of latitude was a practical approach for the crew of such vessels. The 1954 Special Maritime Frontier Zone Agreement did not have a larger purpose, such as establishing a comprehensive regime for the exploitation of fisheries or adding to the content of the 200-nautical-mile zones or setting out their limits and borders. Peru also maintains that "the 1954 Agreement was a practical arrangement, of a technical nature, and of limited geographical scope, not one dealing in any sense with political matters".

90. In the view of the Court, the operative terms and purpose of the 1954 Special Maritime Frontier Zone Agreement are indeed narrow and specific. That is not however the matter under consideration by the Court at this stage. Rather, its focus is on one central issue, namely, the existence of a maritime boundary. On that issue the terms of the 1954 Special Maritime Frontier Zone Agreement, especially Article 1 read with the preambular paragraphs, are clear. They acknowledge in a binding international agreement that a maritime boundary already exists. The Parties did not see any difference in this context between the expression "límite marítimo" in Article 1 and the expression "frontera marítima" in the Preamble, nor does the Court.

91. The 1954 Special Maritime Frontier Zone Agreement does not indicate when and by what means that boundary was agreed upon. The Parties' express acknowledgment of its existence can only reflect a tacit agreement which they had reached earlier. In this connection, the Court has 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 (see paragraphs 43 and 69 above). In an earlier case, the Court, recognizing that "[t]he establishment of a permanent maritime boundary is a matter of grave importance", underlined that "[e]vidence 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 this 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.

92. 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.

93. In this context, the Parties referred to an Opinion prepared in 1964 by Mr. Raul Bazan Davila, Head of the Legal Advisory Office of the Chilean Ministry of Foreign Affairs, in response to a request from the Chilean Boundaries Directorate regarding "the delimitation of the frontier between the Chilean and Peruvian territorial seas". Having recalled the relevant rules of international law, Mr. Bazan examined the question whether some specific agreement on maritime delimitation existed between the two States. He believed that it did, but was not able to determine "when and how this agreement was reached". Paragraph IV of the 1952 Santiago Declaration was not "an express pact" on the boundary, but it "assum[ed] that this boundary coincides with the parallel that passes through the point at which the land frontier reaches the sea". It was possible to presume, he continued, that the agreement on the boundary preceded and conditioned the signing of the 1952 Santiago Declaration.

94. According to Peru, the fact that such a request was addressed to the Head of the Legal Advisory Office illustrates that the Chilean Government was unsure about whether there was a pre-existing boundary. Chile emphasizes Mr. Bazan's conclusion that the maritime boundary between the Parties is the parallel which passes through the point where the land boundary reaches the sea. Chile also notes that this was a publicly available document and that Peru would have responded if it had disagreed with the conclusion the document stated, but did not do so.

95. Nothing in the Opinion prepared by Mr. Bazan, or the fact that such an Opinion was requested in the first place, leads the Court to alter the conclusion it reached above (see paragraphs 90 to 91), namely, that by 1954 the Parties acknowledged that there existed an agreed maritime boundary.

4. The 1968-1969 lighthouse arrangements

96. In 1968-1969, the Parties entered into arrangements to build one lighthouse each, "at the point at which the common border reaches the sea, near boundary marker number one". At this point, the Court observes that on 26 April 1968, following communication between the Peruvian Ministry of Foreign Affairs and the Chilean *charge d'¦affaires* earlier that year, delegates of both Parties signed a document whereby they undertook the task of carrying out "an on-site study for the installation of leading marks visible from the sea to materialise the parallel of the maritime frontier originating at Boundary Marker number one (No. 1)". That document concluded as follows: "Finally, given that the parallel which it is intended to materialise is that which corresponds

to the geographical location indicated in the Act signed in Lima on 1 August 1930 for Boundary Marker No. 1, the Representatives suggest that the positions of this pyramid be verified by a Joint Commission before the execution of the recommended works."

97. Chile sees the Parties, in taking this action, as explicitly recording their understanding that there was a "maritime frontier" between the two States and that it followed the line of latitude passing through Boundary Marker No. 1 (referred to in Spanish as "Hito No. 1"). Chile states that the Parties' delegates "recorded their joint understanding that their task was to signal the existing maritime boundary". Chile quotes the terms of the approval in August 1968 by the Secretary-General of the Peruvian Ministry of Foreign Affairs of the Minutes of an earlier meeting that the signalling marks were to materialize ("materializar") the parallel of the maritime frontier. Chile further relies on an August 1969 Peruvian Note, according to which the Mixed Commission entrusted with demarcation was to verify the position of Boundary Marker No. 1 and to "fix the definitive location of the two alignment towers that were to signal the maritime boundary". The Joint Report of the Commission recorded its task in the same terms.

98. In Peru's view, the beacons erected under these arrangements were evidently a pragmatic device intended to address the practical problems arising from the coastal fishing incidents in the 1960s. It calls attention to the beacons' limited range - not more than 15 nautical miles offshore. Peru argues that they were plainly not intended to establish a maritime boundary. Throughout the process, according to Peru, there is no indication whatsoever that the two States were engaged in the drawing of a definitive and permanent international boundary, nor did any of the correspondence refer to any pre-existent delimitation agreement. The focus was consistently, and exclusively, upon the practical task of keeping Peruvian and Chilean fishermen apart and solving a very specific problem within the 15-nautical-mile range of the lights.

99. The Court is of the opinion that the purpose and geographical scope of the arrangements were limited, as indeed the Parties recognize. The Court also 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. The arrangements seek to give effect to it for a specific purpose.

5. The nature of the agreed maritime boundary

100. As the Court has just said, it is the case that the 1954 Special Maritime Frontier Zone Agreement refers to the existing boundary for a particular purpose; that is also true of the 1968-1969 arrangements for the lighthouses. The Court must now determine the nature of the maritime boundary, the existence of which was acknowledged in the 1954 Agreement, 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.

101. Chile contends that the boundary is an all-purpose one, applying to the sea-bed and subsoil as well as to the waters above them with rights to their resources in accordance with customary law as reflected in the United Nations Convention on the Law of the Sea (UNCLOS). Peru submits that the line to which the 1954 Special Maritime Frontier Zone Agreement refers is related only to aspects of the policing of coastal fisheries and facilitating safe shipping and fishing in near-shore areas.

102. The Court is concerned at this stage with the 1954 Special Maritime Frontier Zone Agreement only to the extent that it acknowledged the existence of a maritime boundary. The tacit agreement, acknowledged in the 1954 Agreement, must be understood in the context of the 1947 Proclamations and the 1952 Santiago Declaration. These instruments expressed claims to the sea-bed and to waters above the sea-bed and their resources. In this regard the Parties drew no distinction, at that time or subsequently, between these spaces. The Court concludes that the boundary is an all-purpose one.

6. The extent of the agreed maritime boundary

103. The Court now turns to consider the extent of the agreed maritime boundary. It recalls that the purpose of the 1954 Agreement was narrow and specific (see paragraph 90 above): 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 considered, such activity took place. That activity is one element of the Parties' relevant practice which the Court will consider, but it is not the only element warranting consideration. The Court will examine other 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 will also assess the practice of the two Parties subsequent to 1954. This analysis could contribute to the determination of the content of the tacit agreement which the Parties reached concerning the extent of their maritime boundary.

A. Fishing potential and activity

104. The Court will begin with the geography and biology in the area of the maritime boundary. Peru described Ilo as its principal port along this part of the coast. It is about 120 km north-west of the land boundary. On the Chilean side, the port city of Arica lies 15 km to the south of the land boundary and Iquique about 200 km further south (see sketch-map No. 1: Geographical context).

105. Peru, in submissions not challenged by Chile, emphasizes that the areas lying off the coasts of Peru and Chile are rich in marine resources, pointing out that the area in dispute is located in the Humboldt Current Large Maritime Ecosystem. That Current, according to Peru, supports an abundance of marine life, with approximately 18 to 20 per cent of the world's fish catch coming from this ecosystem. The Peruvian representative at the 1958 United Nations Conference on the Law of the Sea (paragraph 106 below) referred to the opinion of a Peruvian expert (writing in a book published in 1947), according to which the "biological limit" of the Current was to be found at a distance of

80 to 100 nautical miles from the shore in the summer, and 200 to 250 nautical miles in the winter. Peru recalls that it was the "enormous whaling and fishing potential" of the areas situated off their coasts which led the three States to proclaim 200-nautical-mile zones in 1952. Industrial fishing is carried out nowadays at significant levels in southern areas of Peru, notably from the ports of Ilo and Matarani: the former is "one of Peru's main fishing ports and the most important fishing centre in southern Peru".

106. Chilean and Peruvian representatives emphasized the richness and value of the fish stocks as preparations were being made for the first United Nations Conference on the Law of the Sea and at that Conference itself. In 1956 the Chilean delegate in the Sixth (Legal) Committee of the United Nations General Assembly, declaring that it was tragic to see large foreign fishing fleets exhausting resources necessary for the livelihood of coastal populations and expressing the hope that the rules established by the three States, including Ecuador, would be endorsed by international law, observed that "[t]he distance of 200 miles was explained by the need to protect all the marine flora and fauna living in the Humboldt current, as all the various species depended on one another for their existence and have constituted a biological unit which had to be preserved". At the 1958 Conference, the Peruvian representative (who was the Foreign Minister at the time of the 1947 Declaration), in supporting the 200-nautical-mile limit, stated that what the countries had proclaimed was a biological limit: "Species such as tunny and barrilete were mostly caught 20 to 80 miles from the coast; the same anchovetas of the coastal waters sometimes went 60 or more miles away; and the cachalot and whales were usually to be found more than 100 miles off."

He then continued:"The requests formulated by Peru met the conditions necessary for their recognition as legally binding and applicable since first, they were the expression of principles recognized by law; secondly, they had a scientific basis; and thirdly, they responded to national vital necessities."

107. Chile referred the Court to statistics produced by the Food and Agricultural Organization of the United Nations (FAO) to demonstrate the extent of the fishery activities of Chile and Peru in the early 1950s and later years for the purpose of showing, as Chile saw the matter, the benefits of the 1952 Santiago Declaration to Peru. Those statistics reveal two facts which the Court sees as helpful in identifying the maritime areas with which the Parties were concerned in the period when they acknowledged the existence of their maritime boundary. The first is the relatively limited fishing activity by both Chile and Peru in the early 1950s. In 1950, Chile'¦s catch at about 90,000 tonnes was slightly larger than Peru's at 74,000 tonnes. In the early 1950s, the Parties' catches of anchovy were exceeded by the catch of other species. In 1950, for instance, Peru's take of anchovy was 500 tonnes, while its catch of tuna and bonito was 44,600 tonnes; Chile caught 600 tonnes of anchovy that year, and 3,300 tonnes of tuna and bonito. Second, in the years leading up to 1954, the Parties' respective catches in the Pacific Ocean included large amounts of bonito/barrilete and tuna. While it is true that through the 1950s the take of anchovy, especially by Peru, increased very rapidly, the catch of the other species continued at a high and increasing level. In 1954 the Peruvian catch of tuna and bonito was 65,900, and of anchovy 43,100, while Chile caught 5,200 and 1,300 tonnes of those

species, respectively. The Parties also referred to the hunting of whales by their fleets and by foreign fleets as one of the factors leading to the adoption of the 1947 and 1952 instruments. The FAO statistics provide some information about the extent of whale catches by the Parties; there is no indication of where those catches occurred.

108. The above information 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. In that context, the Court 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. Ilo, situated about 120 km north-west of the seaward terminus of the land boundary, is described by Peru as "one of [its] main fishing ports and the most important fishing centre in Southern Peru". On the Chilean side, the port of Arica lies just 15 km to the south of the seaward terminus of the land boundary. According to Chile, "[a]significant proportion of the country's small and medium-sized fishing vessels, of crucial importance to the economy of the region, are registered at Arica", while the next significant port is at Iquique, 200 km further south. 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 (see paragraphs 88 to 90 and 103). Boats departing from Arica 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, 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.

109. The Court, in assessing the extent of the lateral maritime boundary which the Parties acknowledged existed in 1954, is aware of the importance that fishing has had for the coastal populations of both Parties. It does not see as of great significance their knowledge of the likely or possible extent of the 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.

110. A central concern of the three States in the early 1950s was with long-distance foreign fishing, which they wanted to bring to an end. That concern, and the Parties' growing understanding of the extent of the fish stocks in the Humboldt Current off their coasts, were major factors in the decisions made by Chile and Peru to declare, unilaterally, their 200-nautical-mile zones in 1947, and, with Ecuador, to adopt the 1952 Santiago Declaration and other texts in 1952 and to take the further measures in 1954 and 1955. To repeat, the emphasis in this period, especially in respect of the more distant waters, was, as Chile asserts, on "[t]he exclusion of unauthorized foreign fleets… to facilitate the development of the fishing industries of [the three States]".

111. The Court recalls that the all-purpose nature of the maritime boundary (see paragraph 102 above) means that evidence concerning fisheries activity, in itself, can-

not 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.

B. Contemporaneous developments in the law of the sea

112. The Court now 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 and 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. By the 1950s that practice included several unilateral State declarations.

113. Those declarations, all adopted between 1945 and 1956, may be divided into two categories. The first category is limited to claims in respect of the sea-bed and its subsoil, the continental shelf, and their resources. They include declarations made by the United States (28 September 1945), Mexico (29 October 1945), Argentina (11 October 1946), Saudi Arabia (28 May 1949), Philippines (18 June 1949), Pakistan (9 March 1950), Brazil (8 November 1950), Israel (3 August 1952), Australia (11 September 1953), India (30 August 1955), Portugal (21 March 1956) and those made in respect of several territories then under United Kingdom authority: Jamaica (26 November 1948), Bahamas (26 November 1948), British Honduras (9 October 1950), North Borneo (1953), British Guiana (1954), Brunei (1954) and Sarawak (1954), as well as nine Arab States then under the protection of the United Kingdom (Abu Dhabi (10 June 1949), Ajman (20 June 1949), Bahrain (5 June 1949), Dubai (14 June 1949), Kuwait (12 June 1949), Qatar (8 June 1949), Ras al Khaimah (17 June 1949), Sharjah (16 June 1949), and Umm al Qaiwain (20 June 1949)). Other declarations, the second category, also claim the waters above the shelf or sea-bed or make claims in respect of the resources of those waters. In addition to the three claims in issue in this case, those claims include those made by the United States of America (28 September 1945), Panama (17 December 1946), Iceland (5 April 1948), Costa Rica (5 November 1949), Honduras (7 March 1950), El Salvador (7 September 1950) and Nicaragua (1 November 1950). The above-mentioned acts are reproduced in the United Nations collection, Laws and Regulations on the High Seas, Vol. I, 1951, Part 1, Chap. 1, and Supplement, 1959, Part 1, Chap. 1, and in the Parties' Pleadings.

114. Some of the declarations did address the issue of establishing maritime boundaries. The first was the continental shelf declaration of the United States, which provided that, whenever the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. Those of Mexico and Costa Rica (like that of Chile, see paragraph 37 above) stated that the particular declaration each had made did not mean that that Government sought to disregard the lawful rights of other States, based on reciprocity. The wording in the Argentinean decree accorded conditional recognition to the right of each nation to the same entitlements as it claimed. Proclamations made by the Arab States then under United Kingdom protection all

provided in similar terms that their exclusive jurisdiction and control of the sea-bed and subsoil extended to boundaries to be determined more precisely, as occasion arises, on equitable or, in one case, just principles, after consultation with the neighbouring States.

115. Those declarations were part of the background against which the International Law Commission worked in preparing its 1956 draft articles for the United Nations Conference on the Law of the Sea, held in 1958. On the basis, among other things, of the material summarized above, the report of a committee of experts, and comments by a significant range of States, the Commission proposed that, in the absence of an agreement or special circumstances, an equidistance line be used for delimitation of both the territorial sea and the continental shelf. The Commission in particular rejected, in the absence of an agreement, as a basis for the line the geographical parallel passing through the point at which the land frontier meets the coast. Chile and Ecuador in their observations submitted to the Commission contended that the rights of the coastal State over its continental shelf went beyond just "control" and "jurisdiction"; Chile, in addition, called for "sovereignty" over both the continental shelf and superjacent waters. However, neither State made any comment on the matter of delimitation. Peru made no comment of any kind. This further supports the view that the chief concern of the three States in this period was defending their 200-nautical-mile claims as against third States. The Commission's proposals were adopted by the 1958 Conference and incorporated, with drafting amendments, in the Convention on the Territorial Sea and Contiguous Zone (Art. 12) and the Convention on the Continental Shelf (Art. 6). The territorial sea was not seen by the International Law Commission, and would not have been seen at that time by most nations, as extending beyond 6 nautical miles and the continental shelf line was for the sea-bed and subsoil, extending to a 200-metre depth or beyond to the limit of exploitability, and not for the resources of the water above the shelf.

116. 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 was about 30 years into the future. 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.

117. 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.

118. In light of this tentative conclusion, the Court now considers 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.

C. Legislative practice

119. In examining the legislative practice, the Court first turns to the adoption by Peru in 1955 of a Supreme Resolution on the Maritime Zone of 200 Miles. Its Preamble recites the need to specify, in cartographic and geodesic work, the manner of determining the Peruvian maritime zone of 200 nautical miles referred to in the 1947 Decree and the 1952 Santiago Declaration. Its first article states that the line was to be limited at sea by a line parallel to the Peruvian coast and at a constant distance of 200 nautical miles from it. Article 2 provides: "In accordance with clause IV ['el inciso IV'] of the Declaration of Santiago, the said line may not extend beyond that of the corresponding parallel at the point where the frontier of Peru ['la frontera del Peru'] reaches the sea." Peru contends that Article 1 employs an arc of circles method, as, it says, was also the case with its 1952 Petroleum Law. Chile rejects that interpretation of both instruments and submits that both use the trace parallele method, supporting the use of the parallel of latitude for the maritime boundary. Chile also places considerable weight on the reference in the Resolution to paragraph IV of the 1952 Santiago Declaration.

120. In this regard, the Court has already concluded that paragraph IV of the 1952 Santiago

Declaration does not determine the maritime boundary separating the general maritime zones of Peru and Chile. It need not consider that matter further in the present context. The Court does not see the requirement in Article 1 of the 1955 Supreme Resolution that the line be "at a constant distance of 200 nautical miles from [the coast]" and parallel to it as using the trace parallele method in the sense that Chile appears to understand it. Some points on a line drawn on that basis (using the parallel lines of latitude) would in certain areas of Peruvian coastal waters, especially near the land boundary of the two States, be barely 100 nautical miles from the closest point on the coast. That would not be in conformity with the plain words of the 1955 Supreme Resolution. Hence, the Peruvian 1955 Supreme Resolution is of no assistance when it comes to determining the extent of the maritime frontier whose existence the Parties acknowledged in 1954.

121. In respect of Chilean legislation, Peru highlights the absence of references to a lateral maritime boundary in five Chilean texts: a 25 July 1953 Decree which defined the maritime jurisdiction of the Directorate General of Maritime Territory and Merchant Marine; a 26 July 1954 Message from the Chilean Executive to the Congress for the Approval of the 1952 Agreements; a 23 September 1954 Supreme Decree by which Chile approved the 1952 Santiago Declaration; an 11 February 1959 Decree on Permits for Fishing by Foreign Vessels in Chilean Territorial Waters; and a 4 June 1963 Decree on the Appointment of the Authority which Grants Fishing Permits to Foreign Flag Vessels in Chilean Jurisdictional Waters. In response, Chile contends that the 1952 Santiago Declaration became part of Chilean law upon ratification and so there was no need to reaffirm the existence of the maritime boundary in subsequent legislation.

122. The Court finds that these five Chilean instruments are of no assistance as to the extent of the maritime frontier whose existence the Parties acknowledged in 1954, for the following reasons. The 1953 Decree relates to the territorial sea out to 12 nautical miles. The 1954 Message recalls the 200-nautical-mile claim made by the three States in 1952 but makes no mention of boundaries between those States. The 1954 Supreme Decree simply reproduces the text of the instruments adopted at the Lima Conference without commenting on their effect. The 1959 Decree refers repeatedly to "Chilean territorial waters" without defining the limits -lateral or seaward- of these waters. Finally, the 1963 Decree speaks of the 200-nautical-mile zone established under the 1952 Santiago Declaration but makes no reference to a lateral boundary within that zone.

D. The 1955 Protocol of Accession

123. In 1955 the three States adopted a Protocol of Accession to the 1952 Santiago Declaration. In that Protocol they agree "to open the accession of Latin American States to [the 1952 Santiago Declaration] with regard to its fundamental principles" contained in the paragraphs of the Preamble. The three States then reproduce substantive paragraphs I, II, III and V, but not paragraph IV. On the matter of boundaries they declare that "the adhesion to the principle stating that the coastal States have the right and duty to protect, conserve and use the resources of the sea along their coasts, shall not be constrained by the assertion of the right of every State to determine the extension and boundaries of its Maritime Zone. Therefore, at the moment of accession, every State shall be able to determine the extension and form of delimitation of its respective zone whether opposite to one part or to the entirety of its coastline, according to the peculiar geographic conditions, the extension of each sea and the geological and biological factors that condition the existence, conservation and development of the maritime fauna and flora in its waters." The only other provision of the 1952 Santiago Declaration which was the subject of an express exclusion from the 1955 Protocol was paragraph VI which concerns the possibility of future agreements in application of these principles. This provision was excluded on the basis that it was "determined by the geographic and biological similarity of the coastal maritime zones of the signatory countries" to the Declaration. It is common ground that no State in fact ever took advantage of the 1955 Protocol.

124. Peru sees the affirmation of the power of an acceding State to determine the extension and limits of its zone as confirming that the 1952 Santiago Declaration had not settled the question of the maritime boundaries between the States parties. Chile reads the positions of the two Parties on paragraph IV in the contrary sense: by that exclusion they indicated their understanding that their maritime boundary was already determined.

125. Given the conclusion that the Court has already reached on paragraph IV, its exclusion from the text of the 1955 Protocol, and the fact that no State has taken advantage of the Protocol, the Court does not see the Protocol as having any real significance. It may however be seen as providing some support to Peru's position that the use of lateral maritime boundaries depended on the particular circumstances of the States wishing to accede to the 1952 Santiago Declaration. More significantly, the 1955

Protocol may also be seen as an attempt to reinforce solidarity for the reasons given by Peru, Chile and Ecuador in their own national legal measures and in the 1952 Santiago Declaration, and as manifested in their other actions in 1955, in response to the protests of maritime powers (see paragraphs 76 to 77 above).

E. Enforcement activities

126. Much of the enforcement practice relevant to the maritime boundary can be divided between that concerning vessels of third States and that involving Peru and Chile, and by eference to time. In respect of the second distinction the Court recalls that its primary, but not exclusive, interest is with practice in the early 1950s when the Parties acknowledged the existence of their maritime boundary.

127. In respect of vessels of third States, Chile draws on a 1972 report of the CPPS Secretary-General on Infractions in the Maritime Zone between 1951 and 1971. The data, the report says, are incomplete for the first ten years. According to the report, in the course of the 20 years it covers, Peru arrested 53 vessels, Chile five and Ecuador 122, the final figure explained by the fact that the interest of foreign fishing fleets had focused, especially in more recent years, on tuna, the catch of which was greater in Ecuadorean waters. All but six of the 53 vessels arrested in Peruvian waters carried the United States flag; five (in the Onassis fleet) carried the Panamanian; and one the Japanese. In the case of 20 of the 53 arrests, the report records or indicates the place at which the arrests took place and all of those places are far to the north of the parallel of latitude extending from the land boundary between Peru and Chile, and closer to the boundary between Peru and Ecuador. For 36, the distance from the coast is indicated. They include the Onassis fleet which on one account was arrested 126 nautical miles offshore (see paragraph 75 above). Of the other arrests, only one (in 1965) was beyond 60 nautical miles of the coast of Peru and only two others (in 1965 and 1968) were beyond 35 nautical miles; all three of these arrests occurred more than 500 nautical miles to the north of that latitudinal parallel.

128. Until the mid-1980s, all the practice involving incidents between the two Parties was within about 60 nautical miles of the coasts and usually much closer. In 1954 and 1961, Chile proposed that fishing vessels of the Parties be permitted to fish in certain areas of the maritime zone of the other State, up to 50 nautical miles north/south of the parallel, but the exchanges between the Parties do not indicate how far seaward such arrangements would have operated; in any event Chile's proposals were not accepted by Peru. In December 1962, Peru complained about "the frequency with which Chilean fishing vessels have trespassed into Peruvian waters, at times up to 300 metres from the beach." In March 1966, the Peruvian patrol ship Diez Canseco was reported to have intercepted two Chilean fishing vessels and fired warning shots at them, but the entire incident took place within 2 nautical miles of the coast. Two incidents in September 1967 - the sighting by Peru of several Chilean trawlers "north of the jurisdictional boundary" and the sighting by Chile of a Peruvian patrol boat "south of the Chile-Peru boundary parallel" -both occurred within 10 nautical miles of Point Concordia. Following a third incident that month, Peru complained about a Chilean fishing net found 2 nautical miles west of Point Concordia. In respect of these incidents, the Court recalls that the zone

of tolerance established under the 1954 Agreement starts at a distance of 12 nautical miles from the coast along the parallel of latitude.

129. The practice just reviewed does not provide any basis for putting into question the tentative conclusion that the Court expressed earlier. That conclusion was based on the fishing activity of the Parties and contemporaneous developments in the law of the sea in the early and mid-1950s.

F. The 1968-1969 lighthouse arrangements

130. The Court recalls its discussion of the 1968-1969 lighthouse arrangements (see paragraphs 96 to 99 above). The record before the Court indicates that the lights would have been visible from a maximum distance of approximately 15 nautical miles; as Chile acknowledges, the Parties were particularly concerned with visibility within the first 12 nautical miles from the coast, up to the point where the zone of tolerance under the 1954 Special Maritime Frontier Zone Agreement commenced, and where many of the incursions were reported. There are indications in the case file that the towers had radar reflectors but there is no information at all of their effective range or their use in practice. The Court does not see these arrangements as having any significance for the issue of the extent of the maritime boundary.

G. Negotiations with Bolivia (1975-1976)

131. In 1975-1976, Chile entered into negotiations with Bolivia regarding a proposed exchange of territory that would provide Bolivia with a "corridor to the sea" and an adjacent maritime zone. The record before the Court comprises the Chilean proposal to Bolivia of December 1975, Peru's reply of January 1976, Chile's record (but not Peru's) of discussions between the Parties in July 1976 and Peru's counter-proposal of November 1976. Chile's proposal of December 1975 stated that the cession would include, in addition to a strip of land between Arica and the Chile-Peru land boundary, "the maritime territory between the parallels of the extreme points of the coast that will be ceded (territorial sea, economic zone and continental shelf)". This proposal was conditional, among other things, on Bolivia ceding to Chile an area of territory as compensation. The record before the Court does not include the Bolivian-Chilean exchanges of December 1975. As required under Article 1 of the Supplementary Protocol to the 1929 Treaty of Lima, Peru was formally consulted on these negotiations. In January 1976, Peru acknowledged receipt of documents from Chile regarding the proposed cession. Peru's response was cautious, noting a number of "substantial elements" arising, including the consequences of "the fundamental alteration of the legal status, the territorial distribution, and the socio-economic structure of an entire region." According to Chile's record of discussions between the Parties, in July 1976 Chile informed Peru that it would seek assurances from Bolivia that the latter would comply with the 1954 Special Maritime Frontier Zone Agreement, while Peru confirmed that it had not identified in Chile's proposal any "major problems with respect to the sea." On 18 November 1976, Peru made a counter-proposal to Chile which contemplated a different territorial regime: cession by Chile to Bolivia of a sovereign corridor to the north of Arica; an area of shared Chilean-Peruvian-Bolivian sovereignty over territory between that corridor and the sea; and exclusive Bolivian sovereignty over

the sea adjacent to the shared territory. 132. According to Chile, its negotiations with Bolivia proceeded on the explicit basis that the existing maritime boundary, following the latitudinal parallel, would delimit the envisaged maritime zone of Bolivia *vis-a-vis* Peru. Chile submits that Peru was specifically consulted on this matter, and expressed no objection or reservation, but rather "acknowledged the existence and course of the Chile-Peru maritime boundary" at one of the sessions between the Parties in 1976. For its part, Peru stresses that neither its Note of January 1976 nor its alternative proposal of November 1976 mentioned a parallel of latitude or suggested any method of maritime delimitation for Bolivia's prospective maritime zone. Peru further contends that Chile's records of the 1976 discussions are unreliable and incomplete, and that its own position at the time was clearly that the territorial divisions in the area were still to be negotiated.

133. The Court does not find these negotiations significant for the issue of the extent of the maritime boundary between the Parties. While Chile's proposal referred to the territorial sea, economic zone and continental shelf, Peru did not accept this proposal. Peru's January 1976 acknowledgment did not mention any existing maritime boundary between the Parties, while its counter-proposal from November of that year did not indicate the extent or nature of the maritime area proposed to be accorded to Bolivia.

H. Positions of the Parties at the Third United Nations Conference on the Law of the Sea

134. The Parties also directed the Court to certain statements made by their representatives during the Third United Nations Conference on the Law of the Sea. First, both referred to a joint declaration on 28 April 1982 made by Chile, Ecuador and Peru, together with Colombia, which had joined the CPPS in 1979, wherein those States pointed out that: "The universal recognition of the rights of sovereignty and jurisdiction of the coastal State within the 200-mile limit provided for in the draft Convention is a fundamental achievement of the countries members of the Permanent Commission of the South Pacific, in accordance with its basic objectives stated in the Santiago Declaration of 1952". The Court notes that this statement did not mention delimitation, nor refer to any existing maritime boundaries between those States.

135. A second matter raised by the Parties is Peru's involvement in the negotiations relating to maritime delimitation of States with adjacent or opposite coasts. The Peruvian position on that matter was expressed at various points during the negotiations; on 27 August 1980, the Head of the Peruvian Delegation stated it as follows: "Where a specific agreement on the delimitation of the territorial sea, exclusive economic zone and continental shelf between States with opposite or adjacent coasts did not exist or where there were no special circumstances or historic rights recognized by the Parties, the median line should as a general rule be used… since it was the most likely method of achieving an equitable solution." Peru contends that its "active participation" in the negotiations on this matter illustrates that it had yet to resolve its own delimitation issues. Given the conclusions reached above, however, the Court need not consider that matter. The statements by Peruvian representatives at the Third United Nations Conference on the Law of the Sea relate to prospective maritime boundary agreements between States (and provisional arrangements to be made pending such agreements); they do not shed light on the extent of the existing maritime boundary between Peru and Chile.

I. The 1986 Bakula Memorandum

136. It is convenient to consider at this point a memorandum sent by Peruvian Ambassador Bakula to the Chilean Ministry of Foreign Affairs on 23 May 1986, following his audience with the Chilean Foreign Minister earlier that day ("the Bakula Memorandum"). Peru contends that in that Memorandum it "invites Chile to agree an international maritime boundary". Chile, to the contrary, submits that the Bakula Memorandum was an attempt to renegotiate the existing maritime boundary.

137. According to the Memorandum, Ambassador Bakula had handed the Chilean Minister a personal message from his Peruvian counterpart. The strengthening of the ties of friendship between the two countries "must be complemented by the timely and direct solution of problems which are the result of new circumstances, with a view to enhancing the climate of reciprocal confidence which underlies every constructive policy. One of the cases that merits immediate attention is the formal and definitive delimitation of the marine spaces, which complement the geographical vicinity of Peru and Chile and have served as scenario of a long and fruitful joint action." At that time, the Memorandum continued, the special zone established by the 1954 Agreement "is not adequate to satisfy the requirements of safety nor for the better attention to the administration of marine resources, with the aggravating circumstance that an extensive interpretation could generate a notorious situation of inequity and risk, to the detriment of the legitimate interests of Peru, that would come forth as seriously damaged." It referred to the various zones recognized in UNCLOS and said this: "The current '200-mile maritime zone' - as defined at the Meeting of the Permanent Commission for the South Pacific in 1954- is, without doubt, a space which is different from any of the abovementioned ones in respect of which domestic legislation is practically non-existent as regards international delimitation. The one exception might be, in the case of Peru, the Petroleum Law (No. 11780 of 12 March 1952), which established as an external limit for the exercise of the competences of the State over the continental shelf 'an imaginary line drawn seaward at a constant distance of 200 miles'. This law is in force and it should be noted that it was issued five months prior to the Declaration of Santiago. There is no need to underline the convenience of preventing the difficulties which would arise in the absence of an express and appropriate maritime demarcation, or as the result of some deficiency therein which could affect the amicable conduct of relations between Chile and Peru."

138. On 13 June 1986, in an official *communique*, the Chilean Foreign Ministry said that: "Ambassador Bakula expressed the interest of the Peruvian Government to start future conversations between the two countries on their points of view regarding maritime delimitation. The Minister of Foreign Affairs, taking into consideration the good relations existing between both countries, took note of the above stating that studies on this matter shall be carried out in due time."

139. Peru contends that the Bakula Memorandum is perfectly clear. In it Peru spelled out the need for "the formal and definitive delimitation" of their maritime spaces, distinguishing it from the ad hoc arrangements for specific purposes, such as the 1954 fisheries policing tolerance zone. It called for negotiations, not "renegotiations". And,

Peru continues, Chile did not respond by saying that there was no need for such a delimitation because there was already such a boundary in existence. Rather "studies … are to be carried out." Peru, based on the Memorandum and this response, also contends that the practice after that date which Chile invokes cannot be significant.

140. Chile, in addition to submitting that the Bakula Memorandum called for a renegotiation of an existing boundary, said that it did that on the (wrong) assumption that the maritime zones newly recognized in UNCLOS called for the existing delimitation to be revisited. As well, Peru did not renew its request to negotiate. Chile submits that the fact that Peru was seeking a renegotiation was reflected in contemporaneous comments by the Peruvian Foreign Minister, reported in the Chilean and Peruvian press.

141. The Court does not read the Bakula Memorandum as a request for a renegotiation of an existing maritime boundary. Rather, it calls for "the formal and definitive delimitation of the marine spaces". While Peru does recognize the existence of the special zone, in its view that zone did not satisfy the requirements of safety nor did it allow an appropriate administration of marine resources; further, an extensive interpretation of the Special Maritime Frontier Zone Agreement would negatively affect Peru's legitimate interests. In the Court's view, the terms used in that Memorandum do acknowledge that there is a maritime boundary, without giving precise information about its extent. The Court does not see the newspaper accounts as helpful. They do not purport to report the speech of the Peruvian Minister in full.

142. There is force in the Chilean contention about Peru's failure to follow up on the issues raised in the Bakula Memorandum in a timely manner: according to the record before the Court, Peru did not take the matter up with Chile at the diplomatic level again until 20 October 2000, before repeating its position in a Note to the United Nations Secretary-General in January 2001 and to Chile again in July 2004. However, the Court considers that the visit by Ambassador Bakula and his Memorandum do reduce in a major way the significance of the practice of the Parties after that date. The Court recalls as well that its primary concern is with the practice of an earlier time, that of the 1950s, as indicating the extent of the maritime boundary at the time the Parties acknowledged that it existed.

J.Practice after 1986

143. The Court has already considered the Parties' legislative practice from the 1950s and 1960s (see paragraphs 119 to 122 above). Chile also relies on two pieces of legislation from 1987: a Peruvian Supreme Decree adopted on 11 June 1987 and a Chilean Supreme Decree adopted on 26 October of that year. Chile sees these instruments as evidence that, in defining the areas of sovereign control by their navies, the Parties respected the maritime boundary.

144. The Court notes that these Decrees define the limits of the Parties' internal maritime districts. However, as Peru points out in respect of its own Decree, while these instruments define the northern and southern limits of districts with some specificity (by reference to parallels of latitude), that is not the case for those limits abutting inter-

national boundaries between Ecuador and Peru, Peru and Chile, or Chile and Argentina. These Decrees define the internal limits of the jurisdiction of certain domestic authorities within Chile and within Peru; they do not purport to define the international limits of either State. In view also of the temporal considerations mentioned above, the Court does not see these Decrees as significant.

145. Peru in addition referred the Court to a Chilean Decree of 1998 defining benthonic areas of the Chilean coast; the northern limit ran to the south-west. But, as Chile says, the Decree was concerned only with the harvesting of living resources on and under the sea-bed within its "territorial seas". The Court does not see this Decree as significant for present purposes.

146. The Court returns to evidence of enforcement measures between the Parties. The next capture recorded in the case file after May 1986 is from 1989: the Peruvian interception and capture of two Chilean fishing vessels within Peruvian waters, 9.5 nautical miles from land and 1.5 nautical miles north of the parallel.

147. Chile also provided information, plotted on a chart, of Peruvian vessels captured in 1984 and from 1994 in the waters which, in Chile's view, are on its side of the maritime boundary. The information relating to 1984 records 14 vessels but all were captured within 20 nautical miles of the coast; in 1994 and 1995, 15, all within 40 nautical miles; and it is only starting in 1996 that arrests frequently occurred beyond 60 nautical miles. Those incidents all occurred long after the 1950s and even after 1986. The Court notes, however, that Chile's arrests of Peruvian vessels south of the parallel, whether they took place within the special zone or further south, provide some support to Chile's position, although only to the extent that such arrests were met without protest by Peru. This is the case even with respect to arrests taking place after 1986.

148. Given its date, the Court does not consider as significant a sketch-map said to be part of the Chilean Navy's Rules of Engagement in the early 1990s and which depicts a Special Maritime Frontier Zone stretching out to the 200-nautical-mile limit, or information provided by Chile in respect of reports to the Peruvian authorities by foreign commercial vessels between 2005 and 2010 and to the Chilean authorities by Peruvian fishing vessels across the parallel.

K. The extent of the agreed maritime boundary: conclusion

149. The tentative conclusion that the Court reached above was that the evidence at its disposal does not allow it to conclude that the maritime boundary, the existence of which the Parties acknowledged at that time, extended beyond 80 nautical miles along the parallel from its starting-point. The later practice which it has reviewed does not lead the Court to change that position. The Court has also had regard to the consideration that the acknowledgment, without more, in 1954 that a "maritime boundary" exists is too weak a basis for holding that it extended far beyond the Parties' extractive and enforcement capacity at that time.

150. Broader considerations relating to the positions of the three States parties to the 1954 Special Maritime Frontier Zone Agreement, particularly the two Parties in this case,

in the early 1950s demonstrates that the primary concern of the States parties regarding the more distant waters, demonstrated in 1947, in 1952, in 1954 (in their enforcement activities at sea as well as in their own negotiations), in 1955 and throughout the United Nations process which led to the 1958 Conventions on the Law of the Sea, was with presenting a position of solidarity, in particular, in respect of the major third countries involved in long distance fisheries. The States parties were concerned, as they greatly increased their fishing capacity, that the stock was not depleted by those foreign fleets. The seizure of the Onassis whaling fleet, undertaken by Peru in defence of the claims made by the three signatories to the 1952 Santiago Declaration (see paragraph 75 above), was indicative of these concerns. This action occurred 126 nautical miles off of the Peruvian coast. Prior to its seizure, the fleet unsuccessfully sought permission from Peru that it be allowed to hunt between 15 and 100 nautical miles from the Peruvian coast.

151. The material before the Court concerning the Parties' focus on solidarity in respect of long distance fisheries does not provide it with precise information as to the exact extent of the maritime boundary which existed between the Parties. This issue could be expected to have been resolved by the Parties in the context of their tacit agreement and reflected in the treaty which acknowledges that tacit agreement, namely the 1954 Special Maritime Frontier Zone Agreement. This did not happen. This left some uncertainty as to the precise length of the agreed maritime boundary. However, 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

152. Having concluded that there exists a maritime boundary between the Parties, the Court must now identify the location of the starting-point of that boundary.

153. 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 (see paragraph 18) 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". Article 3 of the 1929 Treaty of Lima stipulates that the frontier is subject to demarcation by a Mixed Commission consisting of one member appointed by each Party.

154. According to Peru, the delegates of the Parties to the Mixed Commission could not agree on the exact location of Point Concordia. Peru recalls that this was resolved through instructions issued by the Ministers of Foreign Affairs of each State to their delegates in April 1930 (hereinafter the "Joint Instructions"), specifying to the delegates that Point Concordia was to be 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, with the land frontier thus approaching the sea as an arc tending southward. Peru notes that the Joint Instructions also provided that "[a] boundary marker shall be placed at any point of the arc, as close to the sea as allows preventing it from being destroyed by the ocean waters."

155. Peru recalls that the Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers dated 21 July 1930 (hereinafter the "Final Act"), agreed by the Parties, records that "[t]he demarcated boundary line starts from the Pacific Ocean at a point on the seashore ten kilometres northwest from the first bridge over the River Lluta of the Arica-La Paz railway" (emphasis added). Peru argues that the Final Act then indicates that the first marker along the physical demarcation of the land boundary is Boundary Marker No. 1 (Hito No. 1), located some distance from the low-water line so as to prevent its destruction by ocean waters at 18¢X 21' 03" S, 70¢X 22' 56" W. Peru thus considers that the Final Act distinguishes between a "point" as an abstract concept representing the geographical location of the starting-point of the land boundary (i.e., Point Concordia) and "markers" which are actual physical structures along the land boundary. In Peru's view, as the Final Act refers to both the point derived from Article 2 of the 1929 Treaty of Lima and Boundary Marker No. 1, these two locations must be distinct. Thus, relying on both the Joint Instructions and the Final Act, Peru maintains that Boundary Marker No. 1 was not intended to mark the start of the agreed land boundary but was simply intended to mark, in a practical way, a point on the arc constituting such boundary. Peru moreover refers to contemporaneous sketch-maps which are said to clearly demonstrate that the land boundary does not start at Boundary Marker No. 1. Peru further contends that the reference in the Final Act to Boundary Marker No. 1 as being located on the "seashore" is a mere general description, with this being consistent with the general manner in which other boundary markers are described in the same document. Finally, Peru clarifies that the Final Act agrees to give Boundary Marker No. 9, located near the railway line, the name of "Concordia" for symbolic reasons, an explanation with which Chile agrees.

156. In Chile's view, the outcome of the 1929 Treaty of Lima and 1930 demarcation process was that the Parties agreed that Boundary Marker No. 1 was placed on the seashore with astronomical co-ordinates 18¢X 21' 03" S, 70¢X 22' 56" W and that the land boundary started from this Marker. Chile characterizes the Joint Instructions as indicating that there would be a starting-point on the coast of the land boundary, instructing the delegates to ensure the placement of a marker to indicate such starting-point. Chile relies on an Act of Plenipotentiaries dated 5 August 1930 signed by the Ambassador of Chile to Peru and the Minister of Foreign Affairs of Peru, claiming that it records the "definitive location and characteristics" of each boundary marker and acknowledges that the boundary markers, beginning in order from the Pacific Ocean, demarcate the Peruvian-Chilean land boundary.

157. Peru considers that Chile's claim that Boundary Marker No. 1 is the starting-point of the land boundary faces two insurmountable problems. For Peru, the first such problem is that it means that an area of the land boundary of approximately 200 metres in length has not been delimited, which is not the intention of the 1929 Treaty of Lima and the Final Act. The second problem, according to Peru, is that a maritime boundary cannot start on dry land some 200 metres inland from the coast, referring to what it claims to be a "cardinal principle" of maritime entitlement that the "land dominates the sea". Alternatively, Peru notes that Chile's interpretation requires that the maritime boundary starts where the parallel passing through Boundary Marker No. 1 reaches the

sea, with this being inconsistent with the 1929 Treaty of Lima and the Joint Instructions which clearly refer to the land boundary as following an arc southward from Boundary Marker No. 1. Peru argues that, at least until the 1990s, Chile's own cartographic and other practice clearly acknowledges the starting-point of the land boundary as being Point Concordia, a point recognized as distinct from Boundary Marker No. 1.

158. Chile argues that the lighthouse arrangements of 1968-1969 are also relevant in that they involved a joint verification of the exact physical location of Boundary Marker No. 1. According to Chile, the 1952 Santiago Declaration did not identify the parallel running through the point where the land frontier reaches the sea. The observance and identification of such parallel by mariners gave rise to practical difficulties between the Parties, as a result of which they agreed to signal such parallel with two lighthouses aligned through Boundary Marker No. 1. Chile refers to a document dated 26 April 1968, signed by both Parties, which it claims represents an agreement that it is the parallel of the maritime frontier which would be marked by the lighthouses. Thus, Chile claims that "[t]he 1968-1969 arrangements and the signalling process as a whole confirmed Hito No. 1 as the reference point for the parallel of latitude constituting the maritime boundary between the Parties", further contending that the Parties have also used the parallel passing through this point as the maritime boundary for the capture and prosecution of foreign vessels. Chile further argues that there is corresponding Peruvian practice between 1982 and 2001 treating the parallel running through Boundary Marker No. 1 as the southernmost point of Peruvian territory.

159. Peru recalls that when it proposed to Chile, in 1968, to conclude the lighthouse arrangements, it suggested that it could be "convenient, for both countries, to proceed to build posts or signs of considerable dimensions and visible at a great distance, at the point at which the common border reaches the sea, near boundary marker number one", with Peru submitting that the language of "near Boundary Marker No. 1" clearly indicates that this point was distinct from the seaward terminus of the land boundary at Point Concordia. Peru then continues to explain that the placement of the Peruvian lighthouse at Boundary Marker No. 1 was motivated by practical purposes, arguing that as the purpose of the arrangement was to provide general orientation to artisanal fishermen operating near the coast, not to delimit a maritime boundary, aligning the lights along Boundary Marker No. 1 proved sufficient.

160. The Peruvian Maritime Domain Baselines Law, Law No. 28621 dated 3 November 2005, identifies the co-ordinates of Point Concordia as 18¢X 21' 08" S, 70¢X 22' 39" W, as measured on the WGS 84 datum. The Law sets out 266 geographical co-ordinates used to measure Peru's baselines, culminating in so-called "Point 266", which Peru claims coincides with Point Concordia.

161. Peru contends that Chile has sought, in recent years, to unsettle what it claims to be the Parties' previous agreement that the starting-point of the land boundary is Point Concordia, referring in this regard to an incident in early 2001 in which Chile is alleged to have placed a surveillance booth between Boundary Marker No. 1 and the seashore, an action which elicited an immediate protest from Peru, with this booth being subsequently removed. Chile claims that its decision to remove this booth was

motivated by the proposals of the armies of both Parties that no surveillance patrols occur within 100 metres of the international land boundary, with Chile claiming that it duly reserved its position regarding the course of the land boundary. Peru refers also in this regard to Chilean attempts to pass internal legislation in 2006-2007 referring to the starting-point of the land boundary as the intersection with the seashore of the parallel passing through Boundary Marker No. 1, rather than Point Concordia. Chile considers that its failure to pass the relevant legislation in its originally proposed form was not connected to the substance of the aforementioned reference.

162. The Court notes that on 20 October 2000, Peru communicated to Chile that the Parties disagreed concerning the status of the parallel passing through Boundary Marker No. 1 as a maritime boundary. On 9 January 2001, Peru informed the Secretary-General of the United Nations that it did not agree with Chile's understanding that a parallel constituted the maritime boundary between them at 18¢X 21' 00" S. On 19 July 2004, Peru described the situation as being one in which exchanges between the Parties had revealed "totally dissenting and opposed juridical positions about the maritime delimitation which, in accordance with International Law, evidence a juridical dispute". In such circumstances, the Court will not consider the arguments of the Parties concerning an incident involving a surveillance booth in 2001, the Peruvian Maritime Domain Baselines Law dated 3 November 2005 or the Chilean legislative initiatives in 2006-2007, as such events occurred after it had become evident that a dispute concerning this issue had arisen and thus these actions could be perceived as motivated by the Parties' positions in relation thereto.

163. 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. The Court's task is to ascertain whether the Parties have agreed to any starting-point of their maritime boundary. The jurisdiction of the Court to deal with the issue of the maritime boundary is not contested.

164. The Court notes that during the early preparations for the lighthouse arrangements in April 1968 (discussed at paragraph 96 above) delegates of both Parties understood that they were preparing for the materialization of the parallel running through Boundary Marker No. 1, which the delegates understood to be the maritime frontier, and that the delegates communicated such understanding to their respective Governments.

165. The Governments of both Parties then confirmed this understanding. The Note of 5 August 1968 from the Secretary-General of Foreign Affairs of Peru to the *charge d'affaires* of Chile states: "I am pleased to inform Your Honour that the Government of Peru approves in their entirety the terms of the document signed on the Peruvian-Chilean border n 26 April 1968 by the representatives of both countries in relation to the installation of leading marks to materialise the parallel of the maritime frontier. As soon as Your Honour informs me that the Government of Chile is in agreement, we will be pleased to enter into the necessary discussions in order to determine the date on which the Joint Commission may meet in order to verify the position of Boundary

Marker No. 1 and indicate the definitive location of the towers or leading marks…" The Court notes Peru's approval of the entirety of the document dated 26 April 1968.

166. The Chilean response of 29 August 1968 from the Embassy of Chile to the Ministry of Foreign Affairs of Peru is in the following terms: "The Embassy of Chile presents its compliments to the Honourable Ministry of Foreign Affairs and has the honour to refer to the Meeting of the Joint Chilean-Peruvian Commission held on 25 and 26 April 1968 in relation to the study of the installation of the leading marks visible from the sea to materialise the parallel of the maritime frontier originating at Boundary Marker No. 1. On this point, the Embassy of Chile is pleased to accept on behalf of the Government of Chile the proposals which the technical representatives of both countries included in the Act which they signed on 28 [sic] April 1968 with a view to taking the measures for the abovementioned signalling in order to act as a warning to fishing vessels that normally navigate in the maritime frontier zone. Given that the parallel which it is intended to materialise is the one which corresponds to the geographical situation indicated by Boundary Marker No. 1 as referred to in the Act signed in Lima on 1 August 1930, the Chilean Government agrees that an ad hoc Joint Commission should be constituted as soon as possible for the purpose of verifying the position of this pyramid and that, in addition, the said Commission should determine the position of the sites where the leading marks are to be installed."

167. The Act of the Chile-Peru Mixed Commission in Charge of Verifying the Location of Boundary Marker No. 1 and Signalling the Maritime Boundary of 22 August 1969 (hereinafter the "1969 Act"), signed by the delegates of both Parties, introduces its task using the following language: "The undersigned Representatives of Chile and of Peru, appointed by their respective Governments for the purposes of verifying the original geographical position of the concrete-made Boundary Marker number one (No. 1) of the common frontier and for determining the points of location of the Alignment Marks that both countries have agreed to install in order to signal the maritime boundary and physically to give effect to the parallel that passes through the aforementioned Boundary Marker number one…" (Emphasis added.)

168. The 1969 Act recommends the rebuilding of the damaged Boundary Marker No. 1 on its original location, which remained visible. The 1969 Act also includes a section entitled Joint Report signed by the Heads of each Party's Delegation, describing their task as follows: "!The undersigned Heads of Delegations of Chile and of Peru submit to their respective Governments the present Report on the state of repair of the boundary markers in the section of the Chile-Peru frontier which they have had the opportunity to inspect on the occasion of the works which they have been instructed to conduct in order to verify the location of Boundary Marker number one and to signal the maritime boundary."

169. The Court observes that both Parties thus clearly refer to their understanding that the task which they are jointly undertaking involves the materialization of the parallel of the existing maritime frontier, with such parallel understood to run through Boundary Marker No. 1.

170. In order to determine the starting-point of the maritime boundary, the Court has considered certain cartographic evidence presented by the Parties. The Court observes that Peru presents a number of official maps of Arica, dated 1965 and 1966, and of Chile, dated 1955, 1961 and 1963, published by the Instituto Geografico Militar de Chile, as well as an excerpt from Chilean Nautical Chart 101 of 1989. However, these materials largely focus on the location of the point "Concordia" on the coast and do not purport to depict any maritime boundary.

171. The Court similarly notes that a number of instances of Peruvian practice subsequent to 1968 relied upon by Chile are not relevant as they address the issue of the location of the Peru-Chile land boundary.

172. The only Chilean map referred to by Peru which appears to depict the maritime boundary along a parallel passing through Boundary Marker No. 1 is an excerpt from Chilean Nautical Chart 1111 of 1998. This map, however, confirms the agreement between the Parties of 1968-1969. The Court considers that it is unable to draw any inference from the 30-year delay in such cartographic depiction by Chile.

173. The evidence presented in relation to fishing and other maritime practice in the region does not contain sufficient detail to be useful in the present circumstances where the starting-points of the maritime boundary claimed by each of the Parties are separated by a mere 8 seconds of latitude, nor is this evidence legally significant.

174. The Court considers 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. Both Parties subsequently implemented the recommendations of the 1969 Act by building 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.

175. The Court is not called upon to take a position as to the location of Point Concordia, where the land frontier between the Parties starts. It 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.

176. The Court thus 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

177. 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 will now determine the course of the maritime boundary from that point on.

178. While Chile has signed and ratified UNCLOS, Peru is not a party to this instrument. Both Parties claim 200-nautical-mile maritime entitlements. Neither Party claims an extended continental shelf in the area with which this case is concerned. Chile's claim consists of a 12-nautical-mile territorial sea and an exclusive economic zone and continental shelf extending to 200 nautical miles from the coast. Peru claims a 200-nautical-mile "maritime domain." Peru's Agent formally declared on behalf of his Government that "[t]he term 'maritime domain' used in [Peru's] Constitution is applied in a manner consistent with the maritime zones set out in the 1982 Convention". The Court takes note of this declaration which expresses a formal undertaking by Peru.

179. The Court proceeds on the basis of the provisions of Articles 74, paragraph 1, and 83, paragraph 1, of UNCLOS which, as the Court 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."

180. The methodology which the Court 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).

181. In the present case, Peru proposed that the three-step approach be followed in the delimitation of the maritime boundary between the two States. Peru makes the three following points. First, the relevant coasts and the relevant area within which the delimitation is to be effected are circumscribed by the coasts of each Party lying within 200 nautical miles of the starting-point of their land boundary. The construction of a provisional equidistance line within that area is a straightforward exercise. Secondly, there are no special circumstances calling for an adjustment of the provisional equidistance line and it therefore represents an equitable maritime delimitation: the resulting line effects an equal division of the Parties' overlapping maritime entitlements and does not result in any undue encroachment on the projections of their respective coasts or

any cut-off effect. Thirdly, the application of the element of proportionality as an ex post facto test confirms the equitable nature of the equidistance line.

182. Chile advanced no arguments on this matter. Its position throughout the proceedings was that the Parties had already delimited the whole maritime area in dispute, by agreement, in 1952, and that, accordingly, no maritime delimitation should be performed by the Court.

183. 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). 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 (Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984, pp. 332-333, para. 212; Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002, pp. 431-432, paras. 268-269; Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009, p. 130, para. 218). The situation the Court faces 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.

184. The usual methodology applied by the Court has the aim of achieving an equitable solution. In terms of that methodology, the Court now proceeds to the construction of a provisional equidistance line which starts at the endpoint of the existing maritime boundary (Point A).

185. 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 will be 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).

186. 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.

187. Before continuing the application of the usual methodology, the Court recalls that, in its second submission, Peru requested the Court 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 (see paragraphs 14 to 15 above). This claim is in relation to the area in a darker shade of blue in sketch-map No. 2 (see paragraph 22 above).

188. Peru contends that, in the maritime area beyond 200 nautical miles from the Chilean coast but within 200 nautical miles of its own coast, it has the rights which are accorded to a coastal State by general international law and that Chile has no such rights. 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."

189. 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.

190. After Point B (see paragraph 186 above), the 200-nautical-mile limits of the Parties' maritime entitlements delimited on the basis of equidistance no longer overlap. The Court 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 therefore proceeds from Point B to Point C, where the 200-nautical-mile limits of the Parties' maritime entitlements intersect.

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

191. The Court must now determine 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 this case, the equidistance line avoids any excessive amputation of either State's maritime projections. No relevant circumstances appear in the record before the Court. There is accordingly no basis for adjusting the provisional equidistance line.

192. The next 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.

193. As the Court has already noted (see paragraph 183 above), 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. Having made that point in the case concerning the Continental Shelf (Libyan Arab Jamahiriya/ Malta) (Judgment, I.C.J. Reports 1985, p. 53, para. 74), it continued in these terms: "if the Court turns its attention to the extent of the areas of shelf lying on each side of the line, it is possible for it to make a broad assessment of the equitableness of the result, without seeking to define the equities in arithmetical terms" (ibid., p. 55, para. 75). More recently, the Court 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; see similarly Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway), Judgment, I.C.J. Reports 1993, pp. 66-67, para. 64, and p. 68, para. 67, referring to difficulties, as in the Continental Shelf (Libyan Arab Jamahiriya/ Malta) case, in defining with sufficient precision which coasts and which areas were to be treated as relevant; and Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002, pp. 433-448, paras. 272-307, where although the Court referred to the relevant coastlines and the relevant area, it made no precise calculation of them). In such cases, the Court engages in a broad assessment of disproportionality.

194. Given the unusual circumstances of this 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.

195. 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).

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

VII. CONCLUSION

196. 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.

197. In view of the circumstances of the present 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 present Judgment, in the spirit of good neighbourliness.

198. For these reasons,
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 Sepulveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cancado Trindade, Yusuf, Xue, Donoghue, Sebutinde, Bhandari; Judges ad hoc Guillaume, Orrego Vicuna; 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 Sepulveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cancado Trindade, Yusuf, Xue, Donoghue, Gaja, Bhandari; Judges ad hoc Guillaume, Orrego Vicuna; 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 Sepulveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cancado Trindade, Yusuf, Donoghue; Judge ad hoc Guillaume;

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

(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 Sepulveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cancado Trindade, Yusuf, Donoghue; Judge ad hoc Guillaume;
AGAINST: President Tomka; Judges Xue, Gaja, Sebutinde, Bhandari; Judge ad hoc Orrego

Vicuna;

(5) By fifteen votes to one,

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

IN FAVOUR: President Tomka; Vice-President Sepulveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cancado Trindade, Yusuf, Xue, Donoghue, Gaja,

Sebutinde, Bhandari; Judge ad hoc Guillaume; AGAINST: Judge ad hoc Orrego Vicuna.

Done in English and in French, the Enlish text being authoritative, at the Peace Palace, The Hague, this twenty-seventh day of January, two thousand and fourteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Peru and the Government of the Republic of Chile, respectively. (Signed) Peter TOMKA, President. (Signed) Philippe COUVREUR, Registrar.

President TOMKA and Vice-President SEPULVEDA-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 VICUNA 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 VICUNA appends a separate, partly concurring and partly dissenting, opinion to the Judgment of the Court.