INTERNATIONAL COURT OF JUSTICE

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

# REJOINDER OF THE GOVERNMENT OF CHILE

VOLUME I

11 JULY 2011

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## GLOSSARY OF PRINCIPAL DEFINED TERMS, ABBREVIATIONS AND ACRONYMS

| | |
|---|---|
| **1929-1930 Mixed Commission** | Mixed boundary commission comprising delegates of Chile and Peru, constituted in 1929 pursuant to Article 3 of the Treaty of Lima |
| **1930 Final Act** | Final Act (*Acta Final*) signed on 21 July 1930 by the Chilean and Peruvian delegates to the 1929-1930 Mixed Boundary Commission |
| **1947 Chilean Declaration** | Official Declaration by the President of Chile of 23 June 1947 |
| **1947 Peruvian Supreme Decree** | Peruvian Supreme Decree No. 781 of 1 August 1947 |
| **1952 Conference** | Conference on Exploitation and Conservation of the Maritime Resources of the South Pacific, held in Santiago in August 1952 |
| **1952 Minutes** | Minutes of the meetings of the 1952 Conference |
| **1954 CPPS Meeting** | Meeting of the Permanent Commission of the Conference on Exploitation and Conservation of the Maritime Resources of the South Pacific, held in Santiago, Chile in October 1954, in preparation for the 1954 Inter-State Conference |
| **1954 Inter-State Conference** | Second Conference on Exploitation and Conservation of the Maritime Resources of the South Pacific, held in Lima in December 1954 |
| **1954 Minutes** | Minutes of the 1954 Inter-State Conference |
| **1955 Supreme Resolution** | Peruvian Supreme Resolution No. 23 of 11 January 1955 |

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| **1968 Minutes** | Minutes of the meeting of the Chilean and Peruvian delegates of 26 April 1968, at the Chile-Peru frontier, recording their joint proposal to build two alignment markers on the parallel of Hito No. 1. The 1968 Minutes were subsequently approved by an exchange of notes between Peru and Chile on 5 and 29 August 1968 |
| **1968-1969 Mixed Commission** | Mixed commission comprising delegates of Chile and Peru, charged by the Parties with verifying the location of Boundary Marker No. 1 and with signalling the maritime boundary |
| **1969 Act** | Act (*Acta*) of 22 August 1969 by the 1968-1969 Mixed Commission |
| **Accession Protocol** | Protocol of Accession to the Declaration of Santiago on the Maritime Zone, signed at Quito on 6 October 1955 |
| **Act of Plenipotentiaries** | Act (*Acta*) signed on 5 August 1930 by the Chilean Ambassador to Peru and the Minister of Foreign Affairs of Peru pursuant to Article 4 of the Treaty of Lima |
| **Bákula Memorandum** | Memorandum annexed to Note No. 5-4-M/147 of 23 May 1986 from the Embassy of Peru in Chile to the Ministry of Foreign Affairs of Chile |
| **Bazán Note** | Note No. 138 of 15 September 1964 by the Legal Advisor to the Ministry of Foreign Affairs of Chile |
| **Complementary Convention** | Complementary Convention to the Declaration of Sovereignty on the Two-Hundred-Mile Maritime Zone signed at Lima on 4 December 1954 |
| **CPPS** | Permanent Commission of the South Pacific (*Comisión Permanente del Pacífico Sur*) |
| **EEZ** | Exclusive Economic Zone |
| **FIR** | Flight Information Region |

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| **Hito No. 1** | Boundary marker made of concrete on the Chile-Peru land boundary, the astronomical coordinates and characteristics of which were determined by the 1929-1930 Mixed Boundary Commission and recorded in the Act of Plenipotentiaries. The astronomical latitude of Hito No. 1 was recorded to be 18° 21' 03" S.<br><br>This latitude corresponds to 18° 20' 47" S (otherwise notated as 18° 20'8 S, 18° 20.8' S or 1820.8S) when referred to PSAD56 datum, 18° 20' 58" S when referred to SAD69 datum, and 18° 21' 00" S when referred to WGS84 datum. |
| **ICAO** | International Civil Aviation Organization |
| **ILC** | International Law Commission |
| **LPI** | *Límite político internacional* (international political boundary) |
| **M** | Nautical mile(s) |
| **PSAD56** | Provisional South American Datum 1956 |
| **SAD69** | South American Datum 1969 |
| **Santiago Declaration** | Declaration on the Maritime Zone (*Declaración sobre Zona Marítima*), concluded by Chile, Ecuador and Peru at Santiago on 18 August 1952, 1006 *UNTS* 324 |
| **SHOA** | Hydrographic and Oceanographic Service of the Navy of Chile (*Servicio Hidrográfico y Oceanográfico de la Armada de Chile*), formerly called the Hydrographic and Oceanographic Institute (*Instituto Hidrográfico y Oceanográfico*) |
| **SISPER** | System of information on position and security in the maritime dominion of Peru (*Sistema de información de posición y seguridad en el dominio marítimo del Perú*) |

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| **Treaty of Lima** | Treaty for the Settlement of the Dispute regarding Tacna and Arica, concluded by Chile and Peru at Lima on 3 June 1929, [1929] League of Nations, *Treaty Series* 406 |
| **UNCLOS** | United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982, 1833 *UNTS* 3 |
| **UNTS** | United Nations, *Treaty Series* |
| **Vienna Convention** | Vienna Convention on the Law of Treaties, signed at Vienna on 23 May 1969, 1155 *UNTS* 331 |
| **WGS84** | World Geodetic System 1984 |

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* These figures are reproduced in Volume V of the Rejoinder.

# CHAPTER I
# INTRODUCTION

1.1. The Republic of Chile (***Chile***) submits this Rejoinder pursuant to the Court's Order of 27 April 2010. In accordance with Article 49(3) of the Rules of Court, Chile sets out in this Rejoinder its position on the main issues that divide the Parties, in the light of the Reply by the Republic of Peru (***Peru***) and the arguments there contained which call for a response.

## Section 1. This Case concerns the Legal Source and Character of the Parties' Agreed Maritime Boundary

1.2. It is common ground that a boundary line is in place between the Parties, that it follows the parallel of latitude of 18° 21' 03" S which corresponds to the first land-boundary marker (Hito No. 1), and that this line has been in place for many decades. Chile submits that this is an all-purpose and definitive boundary founded in international treaties. Peru contends it is an *ad hoc*, temporary arrangement for "coastal fisheries". The Parties disagree about the legal foundation and character of a boundary line which has been in place for many decades and observed in the Parties' bilateral practice without incidents or reservations of position, and in relation to a range of matters (e.g., overflight) unconnected to fisheries. The contrast is stark between the situation in this case and maritime spaces in the world which are actually disputed between States. Not only has there been quiet possession on either side of the agreed boundary parallel for many decades, but months only before Peru launched these proceedings, it confirmed that notwithstanding its present claim to Chilean waters "the *status quo* shall be maintained"[1].

1.3. It is incumbent on Peru to prove the existence of the *ad hoc* arrangement for which it contends. But Peru's case is merely an interpretative

[1] "Perú y Chile continuarán con actividades pesqueras [Peru and Chile will continue with fishing activities]", *El Peruano*, 16 August 2007, **Annex 143**.

one: there is no record of an agreement referring to a fisheries line, temporary or otherwise. Rather, the record is replete with unqualified references, over many decades, to the "maritime boundary" or the "maritime frontier". In any event, Peru's case strains credulity. It is common ground that fishing has historically been, and remains, the most important activity in the vicinity of the boundary, both near the shore and farther out at sea. Peru invites the Court to find that the Parties have agreed, observed and enforced a line dividing fisheries jurisdiction, and allocating the most important maritime resource in the relevant area, without having agreed on an all-purpose maritime boundary and without at any time having reserved their position to agree subsequently on a different line as the all-purpose boundary.

1.4. In Chile's submission, the correct explanation is the logically straightforward one. The boundary line in place applies to fishing and fisheries (as it applies in other contexts, including airspace jurisdiction) because it is an agreed, all-purpose, definitive boundary. On this basis Chile submits that the controlling rules in the present case are *pacta sunt servanda* and stability of existing boundaries. These are elemental principles of international law.

1.5. Chile's position is as follows. The Parties have delimited their maritime boundary by agreement. The boundary is the parallel of latitude of the point where their land boundary reaches the sea. The Parties' agreement is set forth in the Santiago Declaration of 1952. This is the treaty by which Chile, Peru, and Ecuador agreed 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"[2]. This broad formulation of maritime jurisdiction encompasses all rights which a State may exercise within 200M of its coasts under present customary international law. Indeed for Chile, as an UNCLOS State, the Santiago Declaration 200M-zone entitlement is given effect to by an UNCLOS-compliant continental shelf and

[2] Santiago Declaration, **Annex 47 to the Memorial**, Art. II.

EEZ — expressly preserving the already existing maritime boundaries[3]. Peru is not an UNCLOS State, and it has a single 200M "maritime dominion" (*dominio marítimo*) which covers waters, subsoil and airspace. Peru's zone has characteristics of a territorial sea[4]. The legal basis on which Peru's maritime zone is opposable to Chile is the Santiago Declaration. The maritime boundary set forth in the Santiago Declaration is an integral part of Peru's "maritime dominion" under that agreement.

1.6. The delimitation provision of the Santiago Declaration is Article IV. The delimitation effected under this provision has three aspects:

*(a)* Article IV effectively confirmed the existing limits of Peru's maritime zone vis-à-vis the other two States parties, Chile and Ecuador. Peru's 200M maritime zone had been defined by a Supreme Decree issued by the President of Peru five years earlier, in 1947. In that Decree, Peru proclaimed a maritime zone with an outer limit replicating the coast at a distance of 200M, and "measured following the line of the geographical parallels" so far as its lateral extent was concerned[5]. Peru's continental coast projected in a rectilinear thrust outward, bounded by parallels of latitude. This claim had met with no protest by either of the adjacent States, Chile and Ecuador.

*(b)* Article IV also dealt with the maritime zone of islands. Islands are to have 200M zones in the form of a radial projection of "the[ir] entire coast"[6] — following, in this respect as well, the Peruvian 1947 claim[7]

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3 See para. 3.117 below.

4 See paras 7.44-7.50 below.

5 Peru's Supreme Decree of 1947, **Annex 6 to the Memorial**, Art. 3.

6 Santiago Declaration, **Annex 47 to the Memorial**, Art. IV.

7 See Peru's Supreme Decree of 1947, **Annex 6 to the Memorial**, Art. 3. Chile's 1947 claim was to like effect, providing for a projection "parallel to these [Chilean] islands at a distance of 200 nautical miles around their coasts": **Annex 27 to the Memorial**, Art. 3.

— except that when an insular zone overlaps with a zone generated by a continental territory, the insular zone "shall be limited by the parallel at the point at which the land frontier of the States concerned reaches the sea"[8]. In other words, the maritime zone which extends seawards from the continent along geographic parallels of latitude cannot be curtailed by an overlapping insular zone located on the other side of the parallel.

*(c)* Finally, and following the same logic, the boundary parallels agreed under Article IV continue to operate as limits to a State's maritime zone even if that State extends the outer limit of its zone in any way. The 200M breadth of the maritime zones set forth in the Santiago Declaration is a "minimum distance"[9]; but no matter how far seaward any State might claim, the Santiago Declaration would constitute a complete delimitation using the parallel of latitude.

1.7. The primacy of the parallels serving as lateral limits to the States parties' continental projections at sea is the key to this entire case, both from an historical perspective and from a conceptual standpoint. Historically, there is a direct line of parentage linking the Santiago Declaration to Peru's 1947 200M claim: in the words of Peru's Congress, the 1947 text is a "necessary antecedent" to the Santiago Declaration[10]. Conceptually, the States parties to the Santiago Declaration adopted the lateral boundaries which followed from Peru's conception of its maritime zone. Peru conceived its continental projection as containing lateral limits in its very definition: to use the language in Peru's 1947 Supreme Decree, its maritime projection was "measured following the line of the

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8 Santiago Declaration, **Annex 47 to the Memorial**, Art. IV.

9 *Ibid*., Art. II.

10 See para. 2.11 below.

geographical parallels"[11]. In his scholarly writings, Judge Jiménez de Aréchaga describes the position as follows:

> "The reason for the fundamental difference in the methods employed between the Atlantic and Pacific delimitations is easy to explain. In 1952 the states that were party to the tripartite [Santiago] declaration were opening entirely new ground in the Law of the Sea by marking their 200-nautical mile (n.m.) claims. In the absence at that time of known principles or agreed rules of delimitations, they chose the method of the parallel of latitude drawn from the point where the land frontier reaches the sea. Such a method would seem to be the logical corollary of the fundamental ground invoked in support of their maritime claims, namely, the direct and linear projection of their land boundaries and land territories into the adjacent seas. Also, the fact that the South American countries in the Pacific have no physical continental shelf in the geological sense, or a very narrow one, may have encouraged the adoption of a solution as the one agreed."[12]

1.8. The Parties were fully aware of the need for lateral boundaries of the 200M zones they were claiming under the Santiago Declaration[13]. Their choice of parallels of latitude was as deliberate[14] as it was justified. As the law stood in 1952, court and arbitral decisions (including the Court's Judgment in the *Anglo-Norwegian Fisheries* case), State practice, codification efforts, and scholarly writings overwhelmingly supported the *tracé parallèle* method — to define the

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11 Peru's Supreme Decree of 1947, **Annex 6 to the Memorial**, Art. 3.

12 E. Jiménez de Aréchaga, "South American Maritime Boundaries", in J. I. Charney and L. M. Alexander (eds), *International Maritime Boundaries, Vol. I*, 1993, **Annex 279 to the Counter-Memorial**, pp. 285-286.

13 See the Draft Convention on Territorial Waters and Related Questions sponsored by (*inter alios*) Chile and Peru and adopted by the Inter-American Juridical Committee on 30 July 1952, described at paras 2.84-2.85 below.

14 Contrary to what Peru suggests at para. 12 of the Reply.

outer limit of the maritime projection of a continental territory[15]. Using parallels of latitude as lateral limits was entirely consistent with this conception of maritime projection. It was also in harmony with the broad geographical context: Chile, Peru and Ecuador were claiming vast ocean expanses by the standards of the time, unconstrained by coasts opposite. Finally, parallels of latitude and meridians had been adopted in the 1939 Panama Declaration to define large zones in the ocean around the Americas, albeit for different purposes[16].

1.9. Because the States parties' continental projections at sea were conceived as adjoining but not overlapping with each other, their lateral limits were an uncontroversial matter in the diplomatic negotiation of the Santiago Declaration. The *travaux préparatoires* record the States parties' intent to use parallels of latitude, drawn from the point where their respective land boundaries reach the sea, as lateral boundaries of their continental maritime zones[17]. The States parties' premise also explains the particular attention given to islands in the wording of the provision — again, to confirm the primacy of the boundary parallels as lateral maritime boundaries in addressing overlaps between continental zones and insular zones. Thus, the States parties claimed maritime zones which were conceived as spatially co-ordinate and concordant.

1.10. Whether a boundary is thought of as a separator of two States' overlapping entitlements[18] or, more broadly, as a line representing the spatial confines of a State's jurisdiction[19], a line between two States' adjoining but not

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15 For a comprehensive historical account see Appendix A to this Rejoinder, pp. 286 *et seq*.

16 See Counter-Memorial, paras 2.45-2.46 and **Figure 6 to the Counter-Memorial**, Vol. I, after p. 64.

17 See paras 2.53-2.55 below.

18 Thus the Award in the *Guinea/Guinea-Bissau* case: "une limite indique jusqu'à quelle extrémité s'étend un domaine, tandis qu'une frontière possède une fonction séparative entre deux Etats." *Delimitation of the maritime boundary between Guinea and Guinea-Bissau*, Award, 14 February 1985, *RIAA*, Vol. XIX, para. 49.

19 Thus in the *Aegean Sea* case the Court described a boundary as the "line. . .where the extension in space of the sovereign powers of Greece meets those of Turkey":

overlapping maritime zones constitutes a boundary between these zones. This was the case under the Santiago Declaration.

1.11. The Parties' agreement on their maritime boundary in the Santiago Declaration of 1952 was both confirmed in and implemented by the Agreement Relating to a Special Maritime Frontier Zone of 1954. As its title indicates, this Agreement established a 10M "special" zone of tolerance "on either side of the parallel which constitutes the maritime boundary between the two countries"[20]. The 1954 Agreement was expressed to be an "integral and supplementary part of, and not in any way to abrogate" the Santiago Declaration[21].

1.12. There was a further significant event at the inter-State conference at which the Agreement Relating to a Special Maritime Frontier Zone was adopted. The three States parties to the Santiago Declaration also memorialized their agreement that "the concept already declared in Santiago that the parallel starting at the boundary point on the coast constitutes the maritime boundary between the neighbouring signatory countries"[22].

1.13. These two agreements in 1954 are a joint, formal, and unambiguous record of what had been the States parties' intent in Article IV of the Santiago Declaration two years earlier. This record had been in Peru's possession for over half a century when Peru launched the present case. Peru now presumes to advance a reading of Article IV which takes no account of this record. Peru's

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*Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, I.C.J. Reports 1978*, p. 36, para. 85. *Oppenheim's International Law*, 9th edn, 1992, p. 661, para. 226: "Boundaries of state territory are, it was said in earlier editions of this work, the imaginary lines on the surface of the earth which separate the territory of one state from that of another, or from unappropriated territory, or from the open sea." (Citations omitted.)

20 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, Art. 1.

21 *Ibid*., Art. 4.

22 Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, p. 7.

reading is that Article IV addresses the limits of insular zones but is not a delimitation provision and does not in itself delimit any boundary[23]. The demerits of that reading are discussed elsewhere in this Rejoinder[24]. The immediate point is that treaty interpretation is a legal process by which to give effect to the intent of the contracting States, in good faith. The intent of the Parties here is known from the objective contemporaneous record: "the parallel starting at the boundary point on the coast constitutes the maritime boundary between the neighbouring signatory countries"[25]. There can be no suggestion that international law requires an intent to effect a maritime delimitation to be expressed in any particular form of words. The ordinary rules of treaty interpretation govern. And on those rules the record in its totality leaves no doubt that the Santiago Declaration, which was complemented by the Agreement Relating to a Special Maritime Frontier Zone, effected a maritime delimitation between the Parties.

1.14. That Chile's reading of Article IV is the proper one also finds ample confirmation in the decades of bilateral practice between the Parties. In particular, Peru has consistently controlled entry to, exit from, and activities in its "maritime dominion" and the airspace above it. In order to do so, Peru has found it necessary to specify and enforce the southern boundary of its "maritime dominion". It has consistently used the existing boundary parallel for that purpose. Peru's present-day gloss that this extensive body of practice — to the very limited extent Peru seeks to address it — is explicable on the basis of an *ad*

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23 See, e.g., Reply, para. 3.81 and footnote 356.

24 See Chapter II, Section 2.B.3 below. One notes that the existing boundary between the Parties would find a basis in the Santiago Declaration even under Peru's reading of Article IV. There are (near-coast) islands within a 200M radius of the boundary line, both in Chile and Peru. The presence and location of these islands would account for the largest part of the course of the existing boundary. This matter is discussed at paragraphs 2.70-2.71 and illustrated on **Figure 65**.

25 Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, p. 7.

*hoc* temporary arrangement for near-shore fisheries is impossible to credit and unsupported by the documentary record.

1.15. In fact, Peru's main argument in this case is one which is expressed only as the *leitmotif*. Peru characterizes the existing boundary line as an "unbalanced delimitation by which it would have ceded a huge part of its maritime domain".[26] Peru devotes a Section of its Reply (Chapter V, Section III)[27] to an exposition of the supposed "inequitableness" of the existing boundary line. As often as possible Peru urges the reader to ignore the agreements which Peru actually concluded, and the half-century of practice and quiet possession on either side of the boundary line, in favour of its perceptions of equitableness formed many decades later, after 200M zones had been accepted as mainstream in international law.

1.16. There are a number of objections to the legal anachronism which Peru proposes. First, no agreement can be overturned or supplanted by later perceptions of inequitableness held by one of the parties[28]. Secondly, the permanence of agreements on boundaries, at sea as on land, is a fundamental rule of international law[29]. Thirdly, the preservation of the existing state of affairs is in itself equitable, protecting the reliance placed by States and their populations on the boundary that has been actually observed in practice[30]. Finally, Peru's claims ignore the many benefits that Peru and its population have derived from the 200M zone to which the Santiago Declaration gave cover of an international treaty. Notably, the harvest from Peru's fishing grounds increased exponentially in the 1960s and 1970s, reaching the world's top position in 1972 (eclipsing the

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26 Reply, para. 13.

27 At pp. 274 *et seq*.

28 See *Frontier Dispute (Burkina Faso v. Mali), Judgment, I.C.J. Reports 1986*, p. 633, para. 149.

29 See paras 6.1-6.6 below; and Counter-Memorial, paras 4.70 *et seq*.

30 *Grisbådarna Case (Norway v. Sweden)*, Award, 23 October 1909, *RIAA*, Vol. XI, pp. 161-162.

catch of the State second in line, Japan, by 72%)[31]. It is hardly equitable to permit Peru to resile now from the delimitation aspect of the treaty which has conferred so much benefit on it over many decades.

1.17. The position is that the lateral boundary agreed between the Parties under the Santiago Declaration remains binding on Peru. This is the case both under the Santiago Declaration and customary international law. That in 2005 Peru adopted an arcs-of-circles methodology to define the outer limit of its "maritime dominion"[32] evidently cannot affect the ongoing validity and binding force of the agreed, existing boundary. Peru's unilateral change of methodology is opposable to Chile only to the extent that it does not affect the Parties' agreed boundary. Chile, too, has adopted an arcs-of-circles methodology[33], without of course suggesting that this has any effect on its agreed maritime boundaries. Quite apart from the rule that agreed boundaries are not affected by a supervening change in circumstances[34], Article IV of the Santiago Declaration read together with Article II make clear that the boundary parallel limits laterally the States parties' maritime zones whatever the seaward extent of these zones may be at any given time. This is of especial importance in assessing Peru's claim to an area of high seas (the *alta mar* area), "[b]eyond the point where the common maritime border ends"[35], forming a triangle of 28,356 km$^2$ that would wrap around Chile's EEZ and continental shelf and cut off 111M of these zones from access to the high seas[36]. Finally, as a matter of customary international law, Articles 74(4) and 83(4) of UNCLOS codify the rule that delimitation of the EEZ and continental shelf is subject to an existing "agreement in force between

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31 See Counter-Memorial, paras 2.135 *et seq*., in particular paras 2.137-2.138.

32 See para. 2.50 below.

33 See the official Chilean chart at **Figure 88**.

34 See Chapter VI (para. 6.3) below.

35 Reply, p. 331, Submission (2).

36 See **Figures 2.4 and 7.1 to the Memorial**, Vol. IV, pp. 15 and 109 and **Figure 2 to the Counter-Memorial**, Vol. I, after p. 8

the States concerned". The Santiago Declaration is the relevant agreement in this case.

1.18. Clearly, Peru now feels that a maritime boundary delimited in accordance with the equidistance method would be more advantageous to it than the parallel of latitude upon which it actually agreed in 1952. Peru knows that *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. Thus, Peru has recently manufactured an argument that no agreement ever existed, hoping that this will be enough to entice the Court to change the existing boundary. Chile's response is simply to invite the Court to review the actual evidential record of treaties and other related practice between the Parties, and then to perform its duty to maintain the stability of this settled boundary.

1.19. This Introduction now turns to a series of unsustainable propositions contained in Peru's case. They all arise from Peru's attempt to create arguments divorced from historical and juridical reality (Section 2). The Introduction then concludes, in Section 3, by providing a summary list of core examples of the agreements and practice of the Parties subsequent to the boundary upon which they agreed in the Santiago Declaration. This list demonstrates that for half a century Chile and Peru have enjoyed a settled maritime boundary.

## Section 2. Major Problems in Peru's Case

1.20. The remarkable defect of Peru's pleadings is that they avoid any methodical analysis of the agreement between Chile and Peru on their maritime boundary as confirmed by the relevant subsequent agreements and practice. Indeed, Peru simply ignores much of the evidence that does not suit its case. Peru selectively addresses individual pieces of evidence, isolates them from their context, and seeks to invoke present-day hindsight to find imperfections in historical documents and events. This way Peru seeks to defend a position already arrived at, notwithstanding the inconsistency of that position with the

weight of the evidence. These are some of the problems arising from Peru's use of this technique:

*(a)* Peru asks the Court to find that it is irrelevant to this case that when in 1947 Peru first declared its 200M maritime zone, Peru specified that it was to be "measured following the line of the geographical parallels"[37].

*(b)* Peru argues that the Santiago Declaration of 1952 is not and never has been a treaty. Peru argues that it was not "a legally-binding instrument"[38], and although it "acquired the status of a treaty"[39] this was apparently only "in domestic political terms"[40], at least until some time later, when "the States concerned came to treat the Declaration as a treaty in their international relations"[41]. Peru asks the Court to accept its present arguments in spite of the fact that after Chile, Ecuador and Peru jointly requested registration of the Santiago Declaration under Article 102 of the United Nations Charter in 1973, the instrument was registered as a treaty, and one that had entered into force upon signature[42].

*(c)* Peru asks the Court to find that the Santiago Declaration was not "an agreement on international maritime boundaries between the three States or between any two of them"[43] and "did not address lateral

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37 1947 Peruvian Supreme Decree, **Annex 6 to the Memorial**, Art. 3. And see Counter-Memorial paras 2.32-2.40; and *cf.* Reply para. 3.37.

38 E.g., Reply, para. 3.157.

39 Memorial, para. 4.70.

40 Reply, para. 3.161.

41 *Ibid*., para. 3.165.

42 Santiago Declaration, **Annex 47 to the Memorial**, footnote 1.

43 Reply, para. 3.118.

boundaries at all"[44]. At the same time, Peru itself says that until now the Santiago Declaration limits the projection of Ecuadorean islands as against Peru's continental maritime zone[45].

*(d)* Peru asks the Court to accept that the Santiago Declaration did not establish a maritime boundary between Ecuador and Peru[46], or between Chile and Peru, without providing any explanation for the fact that when Ecuador, Chile and Peru concluded the Agreement Relating to a Special Maritime Frontier Zone of 1954, which they deemed to be "an integral and supplementary part of"[47] the Santiago Declaration, they referred in Article 1 to "the parallel which constitutes the maritime boundary between the two countries" and in the preamble to that same agreement to "violations of the maritime frontier between adjacent States"[48].

*(e)* Peru's 1955 Supreme Resolution referred to the limits of its "maritime dominion" for the purposes of accurate depiction in cartographic and geodesic works[49]. Recording that the definition therein was "[i]n accordance with clause IV of the Declaration of Santiago", the 1955 Supreme Resolution expressly used the "parallel at the point where the frontier of Peru reaches the sea" to specify the lateral limits of Peru's maritime zone[50]. Peru's present case is that this had no application as between Peru and Chile[51]; and apparently no application between Peru

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44 Memorial, para. 4.74. And also see para. 4.72.

45 E.g., Reply, paras 3.71 and 3.81.

46 *Ibid*., p. 192, footnote 356.

47 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, Art. 4.

48 *Ibid*.

49 See 1955 Supreme Resolution, **Annex 9 to the Memorial**, preambular recital.

50 *Ibid*., Art. 2.

51 Reply, p. 318, footnote 604.

and Ecuador either except concerning Ecuador's insular maritime projection. Peru asks the Court to accept that in an instrument promulgated solely for the purpose of defining the limits of Peru's "maritime dominion", the entire southern boundary and part of the northern boundary of the maritime zone of one of the world's largest fisheries industries[52] was actually left unspecified, without any mention of that fact. Yet following this official cartographic guidance Peru's Foreign Ministry approved maps showing Peru's maritime boundary with Chile as a parallel of latitude as correctly depicting information "directly related to the delimitation of Peru's bordering zones, in accordance with positive international law on this matter"[53]. Peru now asks the Court to believe that its official approvals of these maps do not "reflect the Government's position"[54].

*(f)* Peru asks the Court to accept that "the sole purpose of the 1968 lights was to show near-shore fishermen where the *land* boundary between Peru and Chile lay and whose coasts they were alongside"[55]. Yet the two towers were aligned specifically to signal a parallel of latitude, which the land-boundary line was not. Moreover, the 1968 Minutes jointly prepared by the delegations of Chile and Peru recorded their instructions to signal "the parallel of the maritime frontier originating at Boundary Marker number one"[56]. Indeed, the note to Chile from Peru's Secretary-General of the Ministry of Foreign Affairs, Mr. Pérez

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52 See Counter-Memorial, Chapter II, Section 6.

53 Peruvian Ministerial Resolution No. 458 of 28 April 1961, **Annex 9 to the Reply**.

54 Reply, para. 4.130.

55 *Ibid*., para. 4.28 (emphasis added).

56 1968 Minutes, **Annex 59 to the Memorial**, first paragraph.

de Cuéllar, approving those minutes, also referred to signalling "the parallel of the *maritime frontier*"[57].

*(g)* Peru would have the Court find that the dozens of authoritative publicists on maritime boundary issues, including, for example, Bundy, Evans, Hodgson, Jagota, Jiménez de Aréchaga, Johnston, Lucchini and Vœlckel, Prescott, Reuter, and Salvador Lara, who consider that the Santiago Declaration created a maritime boundary between Chile and Peru along the parallel of latitude are "unconvincing"[58]. Peru similarly dismisses government publications to the same effect by the United States of America and China[59]. Peru would not have failed to note the number of scholarly, professional and government publications which for decades recorded the Chile-Peru maritime boundary as having been definitively agreed; nor would these authors have failed to record the existence of a dispute if one had existed, which it did not[60].

*(h)* Peru asks the Court to find that it is "immaterial"[61] that in 1993 a former President of the Court, Eduardo Jiménez de Aréchaga, wrote a detailed report in the world's leading reference work on international

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57 Note No. (J) 6-4/43 of 5 August 1968 from the Secretary-General of Foreign Affairs of Peru to the chargé d'affaires of Chile, **Annex 74 to the Memorial** (emphasis added).

58 Reply, para. 3.173.

59 *Ibid*., para. 3.174.

60 Note, e.g., E. Jiménez de Aréchaga, "Chile-Peru", in J. I. Charney and R. W. Smith (eds), *International Maritime Boundaries, Vol. IV*, 2002, **Annex 282 to the Counter-Memorial**, p. 2639, which includes an addendum noting that in 2001 Peru sent a communication to the Secretary-General of the United Nations stating that Peru and Chile had not concluded a "specific maritime delimitation treaty".

61 Reply, para. 3.176.

maritime boundaries explaining the existence and course of the Chile-Peru maritime boundary, including with respect to the *alta mar* area[62].

*(i)* Peru asks the Court to find that the fact that the United Nations Division for Ocean Affairs and the Law of the Sea has issued three publications, in 1987, 1991 and 2000, treating the Santiago Declaration as a maritime boundary agreement between Chile and Peru does "not have evidential weight"[63].

*(j)* Peru would have the Court find that it is of "no probative value"[64] that in pleadings before the Court the United States of America, Germany, Denmark, the Netherlands, Canada, Libya and Malta have all treated the Santiago Declaration as having established a maritime boundary between Chile and Peru following a parallel of latitude[65]. Equally inconsequential, Peru says, is the fact that in the *North Sea Continental Shelf* cases, after the pleadings of Professors Oda and Jaenicke for Germany, and Sir Humphrey Waldock for Denmark and the Netherlands, in which they were all *ad idem* on the fact that the Santiago Declaration created a maritime boundary between Chile and Peru following a parallel of latitude[66], the Peruvian President of the Court (and former President of Peru), Judge Bustamante y Rivero, issued a separate opinion in which he did not demur from those submissions, and in which he considered it the normal position that

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62 E. Jiménez de Aréchaga, "Chile-Peru", in J. I. Charney and L. M. Alexander (eds), *International Maritime Boundaries, Vol. I*, 1993, **Annex 280 to the Counter-Memorial**, p. 793.

63 Reply, para. 3.175; and see para. 5.9 below.

64 See Reply, para. 3.174.

65 See Counter-Memorial, paras 2.224-2.234.

66 *Ibid*., para. 2.163.

"lateral delimitation lines of adjacent shelves" be given "parallel directions" creating "shelves of a rectangular shape"[67].

*(k)* Peru curtly dismisses as "wholly unpersuasive"[68], but without explaining why, the position of the Government of Colombia. This position was that lateral delimitation by lines of geographic parallels, "used frequently by several States, was in particular chosen by the three signatory countries of the Santiago Declaration for delimiting their respective maritime jurisdictions. . . It is evident that, in the Pacific Ocean, this line [of parallel] constitutes a clear, fair and simple frontier, which meets the interests of the two countries adequately."[69] This statement was part of the "Statement of Reasons" given by the Government of Colombia in Congress in the process of ratification of the 1975 Ecuador-Colombia maritime boundary treaty, under which the maritime boundary was established as "the line of geographical parallel traversing the point at which the international land frontier between Ecuador and Colombia reaches the sea. . . ."[70]

*(l)* Most importantly, Peru would have the Court believe that more than a half-century of peaceful exercise of sovereign rights and jurisdiction

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67 Separate opinion of President Bustamante y Rivero, *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 61.

68 Reply, para. 3.174.

69 Statement of Reasons of September 1975 by the Minister of Foreign Affairs of Colombia before the Colombian Congress in respect of the bill to approve the Agreement between Colombia and Ecuador concerning Delimitation of Marine and Submarine Areas and Maritime Co-operation, **Annex 214 to the Counter-Memorial**, p. 15.

70 Agreement Concerning Delimitation of Marine and Submarine Areas and Maritime Co-operation between the Republics of Colombia and Ecuador, signed at Quito on 23 August 1975, 996 *UNTS* 237 (entered into force on 22 December 1975), **Annex 9 to the Counter-Memorial**, Art. 1.

on either side of the parallel of latitude is not indicative of the existence of an agreed maritime boundary[71].

## Section 3. Key Evidence of the Parties' Acknowledgement, Implementation and Enforcement of their Agreed Maritime Boundary

1.21. Peru seeks to destroy an agreed maritime boundary by proposing a syntactical interpretation of Article IV of the Santiago Declaration that is inconsistent with the interpretation that the three parties to it have given it since it was agreed in 1952. Chile responded to these syntactical arguments about Article IV of the Santiago Declaration in paragraphs 2.76 *et seq*. and in Chapter IV of the Counter-Memorial. Peru having renewed them in its Reply, Chile is constrained to deal with them again at paragraphs 2.41-2.56 of this Rejoinder. Peru's attempt to create a dispute based on a newly minted reading of Article IV pales into insignificance, however, when the weight of evidence concerning the Parties' subsequent agreements and State practice is considered. The purpose of this section is to set forth in summary form some key examples of subsequent agreements and State practice which demonstrate that for half a century Chile and Peru have been jointly operating on the basis that they have an agreed maritime boundary.

### A. Agreement on Article IV of the Santiago Declaration was Confirmed at the 1954 Inter-State Conference

1.22. In negotiating the 1954 Complementary Convention (i.e., complementary to the Santiago Declaration), Ecuador requested the inclusion of an article clarifying "the dividing line of the jurisdictional sea" between adjacent States. The president of the Session, the Chilean delegate, asked if instead of a new article being added to the Complementary Convention, Ecuador would accept that the three States' agreement on the point be recorded in the Minutes. The Ecuadorean delegate "agreed to record in the Minutes that the three

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[71] See further Counter-Memorial, paras 3.77-3.119.

countries deemed the matter on the dividing line of the jurisdictional waters settled and that said line was the parallel starting at the point at which the land frontier between both countries reaches the sea."[72] The Peruvian delegate agreed, and added "that this agreement was already established in the Conference of Santiago"[73].

1.23. In its Memorial, Peru entirely ignored this explicit agreement that the parallel was "the dividing line of the jurisdictional waters". Although it produced as Annex 57 to the Memorial an extract from the same Minutes, which included a page on which this agreement was explicitly recorded, Peru redacted that part of the page, without indicating that a redaction had been made. The redaction can be seen if one compares page 322 of volume II of the annexes to Peru's Memorial with page 346 of volume II of the annexes to Chile's Counter-Memorial, where the unredacted Minutes appear as Annex 39. In its Reply, Peru makes no attempt to explain this redaction, which Chile pointed out in the Counter-Memorial[74].

1.24. Peru's approach in its Reply is to focus on the fact that what is recorded in the 1954 Minutes as having been "settled" in the Santiago Declaration was only "the dividing line of the jurisdictional waters"[75]. Peru asserts that: "There is no mention of what Chile refers to in its Counter-Memorial as the 'maritime boundaries'."[76] This assertion is misleading. The same agreed Minutes record that on the following day–

> "the concept already declared in Santiago that the parallel starting at the boundary point on the coast constitutes the

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72 Minutes of the First Session of Commission I of the 1954 Inter-State Conference, 2 December 1954 at 10.00 a.m., **Annex 38 to the Counter-Memorial**, p. 3.

73 *Ibid*., p. 4.

74 Counter-Memorial, paras 2.191-2.194, especially footnote 398.

75 Reply, para. 4.14. The Parties' use of the term "jurisdictional waters" is discussed further at paras 2.89-2.92 below.

76 *Ibid*.

> *maritime boundary* between the neighbouring signatory countries, was incorporated into [Article 1 of the Agreement Relating to a Special Maritime Frontier Zone]."[77] (Emphasis added.)

1.25. There is simply no escape from the fact that the Parties agreed in 1954 that they had already settled their maritime boundary in 1952.

## B. THE AGREEMENT RELATING TO A SPECIAL MARITIME FRONTIER ZONE 1954

1.26. The preamble to the Agreement Relating to a Special Maritime Frontier Zone refers to the desire of the three States to establish zones of tolerance on either side of the maritime boundaries between them because "violations of the maritime frontier between adjacent States occur frequently"[78]. Accordingly, Article 1 of that Agreement established zones of tolerance "on either side of the parallel which constitutes the maritime boundary between the two countries"[79]. As noted immediately above, the Minutes of the session at which that Article was adopted record that–

> "the concept already declared in Santiago that the parallel starting at the boundary point on the coast constitutes the maritime boundary between the neighbouring signatory countries, was incorporated into this article."[80]

1.27. It was on the basis of this agreement that Peru sent a Memorandum to Chile in 1962 complaining about "the frequency with which Chilean fishing vessels have trespassed into Peruvian waters" and stating that–

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77 Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, p. 7.

78 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, first recital.

79 *Ibid*., Art. 1.

80 Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, p. 7.

> "the Government of Peru, taking strongly into account the sense and provisions of the 'Agreement Relating to a Special Maritime Frontier Zone', signed in Lima on 4 December 1954, wishes the Government of Chile, particularly through the competent authorities of the port of Arica, to adopt measures to put an end to these illegitimate incursions, and that the owners of fishing vessels be notified that they must refrain from continuing to fish *north of the Peru-Chile frontier*."[81]

## C. PERU'S SUPREME RESOLUTION DEFINING THE LIMITS OF ITS MARITIME ZONE

1.28. In January 1955 the same Peruvian Foreign Minister who had signed the 1954 Agreement Relating to a Special Maritime Frontier Zone, David Aguilar Cornejo, jointly issued with the Peruvian President a Supreme Resolution, prompted by the need–

> "to specify in cartographic and geodesic work the manner of determining the Peruvian maritime zone of 200 miles referred to in the Supreme Decree of 1 August 1947 and the Joint Declaration signed in Santiago on 18 August 1952 by Peru, Chile and Ecuador"[82].

1.29. The Supreme Resolution had only two substantive provisions. The first concerned the outer limit of Peru's 200M claim, which "shall be limited at sea by a line parallel to the Peruvian coast and at a constant distance of 200 nautical miles from it"[83]. The second provision concerned the lateral limits. It read: "In accordance with clause 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 reaches the sea."[84] There was no mention of islands — just as

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81 Memorandum No. 5-4-M/64 of 20 December 1962 from the Peruvian Embassy in Chile to the Ministry of Foreign Affairs of Chile, **Annex 73 to the Counter-Memorial** (emphasis added).

82 1955 Supreme Resolution, **Annex 9 to the Memorial**, preambular recital.

83 *Ibid*., Art. 1.

84 *Ibid*., Art. 2.

there was no mention of islands in the Official Message to Congress by Peru's Foreign Minister in the Parliamentary process for ratification of the agreements of 1952 and 1954 which took place later in the year[85]. There was no suggestion that the parallel bounding Peru's maritime zone applied only as between Ecuador and Peru. Rather, Peru was referring to Article IV of the Santiago Declaration as having established the northern and southern lateral limits of its maritime zone.

1.30. This plain reading is confirmed by a contemporaneous publication by Dr. Enrique García Sayán. Dr. García Sayán, who was a Peruvian leading legal and diplomatic specialist on the law of the sea at the time, as Peru's Foreign Minister had co-signed the 1947 proclamation together with the President of the country, and later served as a Peruvian delegate to the First United Nations Conference on the Law of the Sea. He noted that the outer limit of Peru's maritime zone "will not go beyond the corresponding *parallels* 'at the point where the frontier of Peru reaches the sea'."[86] Peru provided this 1955 Supreme Resolution to the United Nations in 1972, which was published in the United Nations *Legislative Series* in 1974[87].

## D. THE *DIEZ CANSECO* INCIDENT

1.31. In March 1966 a Peruvian Navy corvette, the *Diez Canseco*, responded to perceived transgressions of the Chile-Peru maritime boundary by two Chilean fishing vessels (*Mariette* and *Angamos*) by firing 16 warning shots from its canon. Chile considered that the fishing vessels had been "south of the boundary

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85 Official Letter No. (M)-3-0-A/3 of 7 February 1955 from the Ministry of Foreign Affairs of Peru, **Annex 95 to the Memorial**.

86 E. García Sayán, *Notas sobre la Soberanía Marítima del Perú — Defensa de las 200 millas de mar peruano ante las recientes transgresiones*, 1955, **Annex 266 to the Counter-Memorial**, p. 28 (emphasis added).

87 See United Nations Legislative Series, *National Legislation and Treaties Relating to the Law of the Sea*, 1974, **Annex 164 to the Counter-Memorial**, pp. 27-28.

with Peru"[88] and so requested an explanation from Peru as to why its Navy had "trespassed over the boundary and open[ed] fire in Chilean waters"[89]. In June 1966 the Peruvian Embassy in Chile sent a memorandum to the Chilean Ministry of Foreign Affairs stating that the Chilean fishing vessels had been found "north of the frontier line", giving a series of coordinates for the Peruvian corvette, and stating the distances that those points were from "the frontier line"[90]. Peru noted that when the Chilean boat that it had pursued "was crossing the frontier line", the Peruvian corvette had "abandoned the pursuit"[91]. Thus, Peru concluded, its Navy "did at no time cross the frontier line"[92].

1.32. Peru neither mentioned this incident in its Memorial nor responded to it in its Reply. The *Diez Canseco* incident is mentioned but once in Peru's Reply, in footnote 11 at page 5. Peru describes it as an example of Chile's arguing that because the Parties had "agreed on practical arrangements concerning coastal fishing activities" they had also established an "all-purpose boundary between their respective maritime domains"[93].

1.33. Peru now makes the unsupported assertion that its pursuit was predicated only on the existence of an undefined and apparently temporary "practical arrangement"[94] for which no source is or could be cited, but which fell short of constituting a maritime boundary. The contemporaneous official correspondence cited immediately above plainly shows that Peru understood the "frontier line" to apply to its own Navy, not just to the fishing vessel of which it

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88 Cable No. 48 of 23 March 1966 from the Ministry of Foreign Affairs of Chile to the Chilean Embassy in Peru, **Annex 122 to the Counter-Memorial**.

89 *Ibid*.

90 Memorandum of 8 June 1966 from the Peruvian Embassy in Chile to the Ministry of Foreign Affairs of Chile, **Annex 75 to the Counter-Memorial**, p. 1.

91 *Ibid*., p. 2.

92 *Ibid*.

93 Reply, para. 8.

94 *Ibid*., pp. 4-5, footnote 11.

was in pursuit. The bilateral exchange shows Chile to have had the same position.

1.34. Unable to meet this evidence directly, Peru seizes on the wording used in Chile's Counter-Memorial that the boundary "implied" by the *Diez Canseco* incident was the parallel of latitude of 18° 21' S[95]. The implication referred to was that although the exact latitude of the boundary was not mentioned in the diplomatic exchange, it could be calculated using the coordinates for the *Diez Canseco* that Peru gave in its memorandum combined with the distances that Peru said the corvette was from "the frontier line". But the existence of the maritime boundary was express, indeed emphatic, on the face of the official correspondence. Peru's memorandum referred to the "frontier line" on eleven occasions.

1.35. On the same day as the memorandum to Chile explaining the actions of the *Diez Canseco*, Peru sent a separate memorandum to Chile denouncing 44 "new acts violating the Peruvian maritime frontier [*nuevos actos violatorios de la frontera marítima peruana*]" by Chilean boats as well as "illegal incursions [*incursiones ilegales*]" into the airspace over Peru's "maritime dominion" by two Chilean aeroplanes[96]. This "*frontera marítima*" is more than a line dividing areas of fisheries jurisdiction. It is a boundary, which Peru considered operative in the air as well as at sea and to Navy vessels as well as to fishing vessels.

## E. THE 1968 MINUTES

1.36. In April 1968 representatives of Chile and Peru met at the seaward terminus of the two States' land boundary. The Chilean delegation was led by the Head of the International Boundaries Division of the Ministry of Foreign Affairs of Chile. The Peruvian delegation was led by the Head of the Frontier

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95 Reply, para. 8; **Figure 21 to the Counter-Memorial**, Vol. I, after p. 184.

96 Memorandum of 8 June 1966 from the Peruvian Embassy in Chile to the Ministry of Foreign Affairs of Chile, **Annex 76 to the Counter-Memorial**.

Department of the Ministry of Foreign Affairs of Peru. Both States included hydrographical experts (active-duty and retired Navy officers) in their delegations. In the Minutes that were signed by all of the representatives, the two delegations recorded that their joint task was "to materialise the parallel of the maritime frontier originating at Boundary Marker number one"[97] and that in order to do so they would place one "leading mark" near Hito No. 1, in Peruvian territory, and a second 1,800 metres away in Chilean territory "in the direction of the parallel of the maritime frontier"[98]. As agreed, these two structures were subsequently built to signal the boundary parallel at sea[99].

## F. THE 1968 EXCHANGE OF NOTES

1.37. By note of August 1968, the Secretary-General of the Ministry of Foreign Affairs of Peru, Mr. Javier Pérez de Cuéllar, signing "[f]or the Minister", informed the Chilean chargé d'affaires in Lima that the Government of Peru approved the 1968 Minutes "in their entirety". The note recorded that those Minutes had been signed "by the representatives of both countries in relation to the installation of leading marks to materialise the parallel of the maritime frontier"[100].

1.38. Mr. Pérez de Cuéllar's September 2010 statement which was submitted to the Court as Appendix B to Peru's Reply, makes no mention of his own note from 1968, which was a key document in the 1968-1969 agreements between the Parties. More than forty years after the events under discussion, and without a single reference to the contemporaneous documentary record, Mr. Pérez de Cuéllar now says that "the only purpose" of the Parties' 1968

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97 1968 Minutes, **Annex 59 to the Memorial**, p. 1.

98 *Ibid*.

99 See Counter-Memorial, para. 3.37 and **Figure 22 to the Counter-Memorial**, Vol. I, after p. 194.

100 Note No. (J) 6-4/43 of 5 August 1968 from the Secretary-General of the Ministry of Foreign Affairs of Peru (signing for the Foreign Minister) to the Chilean chargé d'affaires in Peru, **Annex 74 to the Memorial**.

agreement to build two lighthouses in alignment "was for fishermen of both countries to see from the sea the land boundary" and "did not include any reference to maritime boundaries"[101]. Yet in 1968 Mr. Pérez de Cuéllar explicitly represented that the purpose of the two lighthouses was to be "to materialise the parallel of the maritime frontier"[102]. Peru's representation of 1968 cannot be recanted in the course of litigation 42 years later, not least because it formed the first step in an agreement with Chile, in the form of an exchange of notes, which ultimately led to the 1969 Act, discussed below. Chile replied to Mr. Pérez de Cuéllar's note later the same month, August 1968, echoing the language used by both States in the 1968 Minutes and by Peru in its note. Chile referred to "the installation of the leading marks visible from the sea to materialise the parallel of the maritime frontier originating at Boundary Marker No. 1"[103].

## G. PERUVIAN NOTE OF 13 AUGUST 1969

1.39. The following year, Peru informed Chile of the composition of its delegation to the 1968-1969 Peru-Chile Mixed Commission. Peru there recorded that the task of that Mixed Commission was–

> "to verify the position of boundary marker number one and fix the definitive location of the two alignment towers that were to signal the maritime boundary"[104].

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101 Statement of Mr. Javier Pérez de Cuéllar, 30 September 2010, **Appendix B to the Reply**.

102 Note No. (J) 6-4/43 of 5 August 1968 from the Secretary-General of the Ministry of Foreign Affairs of Peru (signing for the Foreign Minister) to the Chilean chargé d'affaires in Peru, **Annex 74 to the Memorial**.

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

104 Note No. 5-4-M/76 of 13 August 1969 from the Peruvian Embassy in Chile to the Ministry of Foreign Affairs of Chile, **Annex 78 to the Counter-Memorial**.

## H. THE 1969 ACT

1.40. The full title of the 1969 Act is the "Act of the Chile-Peru Mixed Commission in Charge of Verifying the Location of Boundary Marker No. 1 and Signalling the Maritime Boundary". The 1969 Act constitutes an agreement between the Parties. Consistently with its title the Act recorded that:

> "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, located on the seashore, constituted a Mixed Commission, in the City of Arica, on the nineteenth of August, nineteen sixty-nine."[105]

1.41. The 1969 Act also recorded that on 21 August 1969 "the Mixed Commission met at Boundary Marker number one" where, "[t]he parallel having been determined, the two points at which the front and rear alignment towers shall be erected were physically marked on this line" [106]. The lighthouses to signal the parallel of the maritime boundary were subsequently constructed on those points and began functioning in 1972[107].

1.42. It is clear on the face of the text that the 1968-1969 Peru-Chile Mixed Commission was implementing the two States' common position that a "maritime boundary" was in place, that it was constituted by a parallel of

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105 1969 Act, **Annex 6 to the Counter-Memorial**.

106 *Ibid*., para. B.2.

107 See Notices to Mariners Nos 57 and 152 of 1972 issued by the Hydrographic Institute of the Chilean Navy, **Annexes 129 and 130 to the Counter-Memorial**.

latitude, and that the relevant parallel was to be identified and signalled by reference to Hito No. 1.

## I. Consultation on Potential Bolivian Maritime Zone in 1976

1.43. Peru has failed to acknowledge that in 1976 it expressed no opposition to the notion that the boundary parallel with Chile would become the maritime boundary between Peru and a then-envisaged Bolivian corridor to the sea to be ceded by Chile as part of an exchange of territory with Bolivia. Peru was formally consulted on this matter, and tasked a special commission to study the matter, chaired by the former President of Peru (and the Court) Bustamante y Rivero. The commission proposed a different territorial arrangement. Peru's proposal was for the coast from a point to the north of the Chilean city of Arica up to the border with Peru to become an area of joint sovereignty among Chile, Peru and Bolivia. Signally, however, Peru continued to accept that the maritime zone appertaining to the relevant coast would be ceded to Bolivia: unlike today, Peru did not lay claim to any part of that maritime zone. Even on Peru's proposal, the existing Chile-Peru maritime boundary would have become the Bolivia-Peru maritime boundary. The proposed maritime zone for Bolivia and its boundaries are depicted on **Figure 73**. Ultimately, negotiations terminated without reaching agreement.

## J. RESOLUTIONS OF THE HARBOUR MASTER OF ILO IN 1989

1.44. On 5 June 1989 the Harbour Master of Ilo[108] issued decisions in two administrative proceedings brought against Chilean vessels, the *Coray-I* and the *Coray-II*[109]. Each vessel was fined 20,000 U.S. Dollars for having breached Article C-070004 of the Peruvian Regulation of Captaincies and Maritime, Fluvial and Lacustrine Activities, which, as set forth in the decisions, "provides that it is prohibited for foreign ships and fishing vessels to carry out fishing activities in waters under Peruvian maritime dominion"[110]. The two vessels were to remain impounded until the fines were paid. The two decisions are substantively identical and record that the vessels were "seized at a point located 1.5 miles from the frontier line of the Republic of Chile, in the jurisdictional waters of Peru"[111]. The text repeats that the vessels were "intercepted and captured" at a location with coordinates 18° 19' S and 70° 39' W by a Peruvian Navy vessel "1.5 miles away from the dividing line of the maritime frontier"[112]. The decisions make clear that the "frontier" is not some sort of limited-purpose

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[108] The Harbour Master of Ilo (a city 140 km northwest of the city of Arica) is an officer of the Peruvian Navy responsible for the control and regulation of activities carried out in Peru's "maritime dominion" "up to the frontier with Chile to the South [hasta la frontera con Chile por el Sur]". Areas of responsibility include, *inter alia*, management of Ilo harbour, fishing activities, safety regulation, law enforcement, resource protection and control of entries into Peru's maritime dominion: Supreme Decree No. 002-87-MA of 11 June 1987 approving the Regulation of Captaincies and Maritime, Fluvial and Lacustrine Activities, **Annex 174 to the Counter-Memorial**.

[109] See Resolution No. 006-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 176 to the Counter-Memorial**; and Resolution No. 007-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 177 to the Counter-Memorial**.

[110] Resolution No. 006-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 176 to the Counter-Memorial**; and Resolution No. 007-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 177 to the Counter-Memorial**.

[111] Resolution No. 006-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 176 to the Counter-Memorial**; and Resolution No. 007-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 177 to the Counter-Memorial**.

[112] Resolution No. 006-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 176 to the Counter-Memorial**; and Resolution No. 007-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 177 to the Counter-Memorial**.

functional line[113]. Rather, the "frontier" referred to was the line that delimited, to use the language of the Peruvian Regulations, the "waters under Peruvian maritime dominion"[114], which the Harbour Master also described as "the jurisdictional waters of Peru"[115].

## K. CONCLUSION

1.45. In its Reply, Peru makes the following remark: "Had the 1952 Declaration of Santiago established an international maritime boundary between Peru and Chile there would surely have been reference to it in the years that followed. But there was not."[116] The examples described immediately above demonstrate that there were numerous references to and confirmations of the Parties' maritime boundary in the years following its agreement. These examples are a small selection of the voluminous evidential record attesting to the existence of an all-purpose maritime boundary following a parallel of latitude, in accordance with the Santiago Declaration.

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1.46. The main body of this Rejoinder is organized as follows:

1.47. Chapter II of this Rejoinder analyses the issues that still divide the Parties in connection with–

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113 See, e.g., Reply, paras 4.25-4.26.

114 Quoted in Resolution No. 006-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 176 to the Counter-Memorial**; and Resolution No. 007-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 177 to the Counter-Memorial**.

115 Resolution No. 006-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 176 to the Counter-Memorial**; and Resolution No. 007-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 177 to the Counter-Memorial**.

116 Reply, para. 3.119.

*(a)* the 1947 unilateral proclamations, which were antecedents to the agreement delimiting the Parties' maritime boundary;

*(b)* the Santiago Declaration of 1952, in which the Parties delimited their maritime boundary using the parallel at the point where the land boundary reaches the sea;

*(c)* the Agreement Relating to a Special Maritime Frontier Zone of 1954, which acknowledged that the Parties had already delimited their maritime boundary using the parallel of latitude, and was deemed by the Parties to be an integral and supplementary part of the Santiago Declaration; and

*(d)* the series of instruments and agreements from 1968 and 1969 by which the Parties agreed jointly to signal their maritime boundary using two lighthouses aligned on the operative parallel of latitude.

1.48. Chapter III discusses issues concerning the practice of the Parties in further implementation of their agreed maritime boundary. Chapter IV explains that as the third State party to the Santiago Declaration and to the Agreement Relating to a Special Maritime Frontier Zone, Ecuador has consistently adopted the same interpretation of those treaties as Chile. This has been recently confirmed in Ecuador's depiction of its maritime boundary with Peru on Nautical Chart IOA 42, published in 2010. Chapter V addresses Peru's attempt in its Reply summarily to dismiss the widespread international acknowledgement of the Parties' agreed maritime boundary. Chapter V also juxtaposes that widespread international acknowledgement against revisionist Peruvian authors who have advocated changing the Parties' maritime boundary, and who, in advocating a change of the boundary, acknowledged that the boundary had been settled. Chapter VI applies the principle of stability of boundaries to the settled practice between the Parties, through which they have acknowledged, observed and enforced their agreed maritime boundary. Chapter VII examines Peru's

alternative argument, in which Peru accepts the maritime boundary constituted by a parallel of latitude until the outer limit of Chile's 200M maritime zone, and asks the Court to allow Peru to absorb into its "maritime dominion" an area of high seas south of that parallel but beyond the outer limit of Chile's maritime zone. Chapter VIII contains a concise summary of the principal aspects of Chile's position and reasoning, and Chapter IX is Chile's formal submissions as to how the Court should dispose of this case.

1.49. This Rejoinder is accompanied by three appendices. Appendix A, as already noted, explains the historical development of methods by which the outer limits of maritime zones are measured. It demonstrates that the *tracé parallèle*, rather than the envelope of arcs of circles, was the dominant method when the Santiago Declaration was concluded in 1952. Appendix B summarizes recent examples of commercial vessels reporting to the Peruvian maritime authorities upon entering into or exiting from Peru's "maritime dominion". Appendix C sets out details of authorizations issued by the Chilean authorities to Peruvian fishing vessels to enter into and transit through Chile's EEZ.

## CHAPTER II
## THE GOVERNING INSTRUMENTS

2.1. In the Santiago Declaration of 1952, the Parties delimited their maritime boundary by agreement. That is the "agreement" for the purposes of Articles 15, 74(4) and 83(4) of UNCLOS, concerning delimitation by agreement of the territorial sea, EEZ and continental shelf, respectively. It is common ground between the Parties that these provisions reflect customary international law.

2.2. The agreement embodied in the Santiago Declaration must be read in its proper context. The Santiago Declaration followed the concordant unilateral proclamations of the Parties in 1947, in which Peru had explicitly claimed a 200M maritime zone measured using parallels of latitude. It was followed by the 1954 Agreement Relating to a Special Maritime Frontier Zone, which was conceived as and stated to be "an integral and supplementary part" of the Santiago Declaration[117], and in which the Parties acknowledged their pre-existing maritime boundary and created zones of tolerance on either side of it. The 1954 Agreement was in turn followed by the 1968-1969 process, in which the Parties agreed to build two lighthouses to signal the parallel of latitude constituting their maritime boundary. This Chapter discusses each one of this series of instruments in chronological order, addressing the matters concerning each of them that remain in dispute between the Parties.

### Section 1. The Unilateral Proclamations of 1947

2.3. In its Reply, Peru devotes close to 20 pages[118] to an attempt to disprove a contention that Chile does not in fact make. Peru attributes to Chile the "contention that the 1947 declarations established an international maritime

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[117] Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, Art. 4. Chile discussed this at paragraphs 2.206 and 4.5-4.7 of the Counter-Memorial.

[118] See Reply, pp. 98-116.

boundary between Peru and Chile."[119] Peru wrongly characterizes Chile's case in the same way at paragraphs 3.29, 3.34, 3.40, 3.43 and 3.49 of the Reply. If Chile's case had been that an agreement on the maritime boundary had been definitively reached in 1947, then Chile would have objected to the jurisdiction of the Court, since such an agreement would have pre-dated the Pact of Bogotá[120] of 1948.

2.4. The primary significance of the 1947 proclamations to this case is as antecedents to the Parties' maritime boundary agreement. The Peruvian proclamation specified that the outer limit of the Peruvian maritime claim was "measured following the line of the geographical parallels"[121]. This conception of seaward projection meant that the southern limit of the Peruvian maritime zone was the parallel of latitude passing through the point where Peru's land boundary with Chile reached the sea. Chile was formally notified of the approach Peru followed in setting forth its maritime claim[122] and acknowledged it without objection.[123] A month earlier, the Chilean proclamation had already set forth that Chile's maritime zone was "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."[124] Thus, when Chile and Peru came to

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119 Reply, para. 3.51.

120 See Counter-Memorial, paras 1.66-1.71.

121 1947 Peruvian Supreme Decree, **Annex 6 to the Memorial**, Art. 3. For further discussion see paras 2.21-2.42 and 4.54-4.57 of the Counter-Memorial.

122 See Note No. 5-4-M/45 of 8 October 1947 from the Peruvian Ambassador to Chile to the Minister of Foreign Affairs of Chile, **Annex 53 to the Counter-Memorial**.

123 See Note No. 015799 of 3 December 1947 from the Vice-Minister of Foreign Affairs of Chile (signing for the Foreign Minister) to the Peruvian Ambassador to Chile, **Annex 55 to the Counter-Memorial**.

124 1947 Chilean Declaration, **Annex 27 to the Memorial**, Art. 3. As noted in the Counter-Memorial, the Chilean and Peruvian proclamations are substantially similar; see Counter-Memorial, paras 2.27-2 43, and the two texts are juxtaposed to each other in **Figure 64**. Chile noted the similarity between the proclamations in its communication to the ILC in 1951: see *Comments by Governments on the draft articles on the continental shelf and related subjects prepared by the ILC at its third Session in 1951* (5th session of the ILC (1953)), document A/2456, Annex II, **Annex 119**, p. 242.

## CHILE: PRESIDENTIAL DECLARATION CONCERNING CONTINENTAL SHELF, 23 JUNE 1947

*Considering:*

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

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 costs, 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;

4. That international consensus of opinion recognizes the right of every country to consider as its national territory any adjacent extension of the epicontinental sea and the continental shelf;

5. That the State has the obligation to protect and guard the exploitation of the natural riches contained in this territory, on sea, on land, and in the air;

*The President of the Republic hereby declares:*

(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 virtue of this declaration of sovereignty at any moment which the Government may consider convenient, such demarcation to be ratified, amplified, or modified in any way to conform with the knowledge, discoveries, studies and interests of Chile as required in the future. Protection and control is hereby declared immediately over all the seas contained within the perimeter formed by the coasts 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.

## PERU: SUPREME DECREE NO. 781 OF 1 AUGUST 1947

THE PRESIDENT OF THE REPUBLIC;

Considering:

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

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

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

. . .

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

. . .

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

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 depths 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 supervining [*sic*] 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.

…

conclude the Santiago Declaration in 1952, their maritime zones abutted, but did not overlap. Delimitation of the maritime zones generated by continental coastlines was therefore a straightforward and uncontroversial exercise when it was done in 1952 and confirmed in 1954 in tripartite international agreements setting forth 200M claims. As between Peru and Chile, delimitation consisted of confirming the dividing line of their non-overlapping unilateral claims.

2.5. Rather than dealing with this point concerning the predicate for the Santiago Declaration, upon which Chile actually relies, Peru embarks in its Reply on a long discussion about the status of Chile's 1947 Official Declaration under Chilean law. The Parties' 1947 proclamations are relevant to this case insofar as they constituted unilateral declarations by Chile and Peru to each other, and by each of them to the international community, of their claims to 200M maritime zones. The precise status of those proclamations under domestic law is neither determinative of their function on the international plane, nor a question for the Court. As the Court stated in the *Nuclear Tests* case in connection with statements made by the French President: "There can be no doubt, in view of his functions, that his public communications or statements, oral or written, as Head of State, are in international relations acts of the French State."[125] Their status under French law was not determinative of their status under international law[126]. The Peruvian 1947 Supreme Decree was jointly issued by Peru's President and Foreign Minister. Chile's 1947 Declaration was

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[125] *Nuclear Tests (New Zealand v. France), Judgment, I.C.J. Reports 1974*, p. 494, para. 51; also see *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), I.C.J. Reports 2006*, p. 27, para. 46; and *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994*, pp. 121-122, paras 25-27.

[126] Also see United Nations, *Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations*, with commentaries thereto (58th session of the ILC (2006)), document A/61/10, **Annex 136**, Principle 4 and commentary thereto, pp. 370-374. E.g.,: "State practice shows that unilateral declarations creating legal obligations for States are quite often made by heads of State or Government or ministers for foreign affairs without their capacity to commit the State being called into question."

issued by the President of Chile. Just like Peru's proclamation, the Chilean text constituted an international claim made by Chile addressed to the international community, including Peru. For the purposes of international law, there is no doubt that it did perform, and was perceived to have performed, that function. In particular:

*(a)* The Chilean Declaration was regarded by those States that protested it as setting forth a claim for international-law purposes[127].

*(b)* Chile so described it in official statements of the legal position in that period[128]. For example, in its comments submitted to the ILC in 1952, Chile described its 1947 Official Declaration as a "categorical claim" to the continental shelf and the superadjacent waters[129].

*(c)* The ILC's Special Rapporteur on the Regime of the High Seas and the Regime of the Territorial Sea, Professor J.P.A. François, observed in 1950 that in its 1947 Declaration, Chile "confirms and proclaims its national sovereignty over the seas adjacent to its coasts. . ."[130].

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127 See Protest by the United Kingdom Government of 6 February 1948 to the Ministry of Foreign Affairs of Chile, **Annex 56 to the Counter-Memorial**; Note of 2 July 1948 from the United States Ambassador to Chile to the Minister of Foreign Affairs of Chile, **Annex 57 to the Counter-Memorial**; Note of 7 April 1951 from the Government of France to the Government of the United Kingdom, **Annex 58 to the Counter-Memorial**, p. 62.

128 See Letter of 16 March 1956 from the Permanent Mission of Chile to the United Nations, reproduced in United Nations, *Comments by Governments on the Provisional Articles Concerning the Regime of the High Seas and the Draft Articles on the Regime of the Territorial Sea adopted by the International Law Commission at its Seventh Session* (8th session of the ILC (1956)), document A/CN.4/99/Add.1, **Annex 17**, pp. 42-43.

129 United Nations, *Comments by Governments on the Draft Articles on the Continental Shelf and Related Subjects Prepared by the ILC at its Third Session in 1951* (5th session of the ILC (1953)), document A/2456, Annex II, **Annex 119**, pp. 242-245.

130 United Nations, *Summary Record of the 69th meeting of the ILC* (2nd session of the ILC (1950)), document A/CN.4/SR.69, **Annex 116**, para. 108.

*(d)* The Inter-American Juridical Committee acknowledged that in its 1947 Declaration, Chile "proclaimed national sovereignty" over the seas adjacent to its coasts[131]. It made a similar acknowledgment with respect to Peru's 1947 Supreme Decree[132].

*(e)* In a 1971 publication titled *National and International Instruments on the Law of the Sea,* Peru's Ministry of Foreign Relations considered that Chile's 1947 Declaration "establishes" Chile's 200M claim[133].

*(f)* In its Reply, Peru quotes with apparent approval the statement of a Chilean official who remarked that "even if the internal legal effects of the Presidential gesture were dubious, the desired international impact was accomplished."[134]

2.6. The salient point here is well illustrated by the Truman Proclamation. This was a text issued by the President of the United States of America in September 1945, and it is a well-accepted example of a maritime claim[135]. It was cited as an antecedent in both the Chilean and Peruvian proclamations of 1947[136]. Although the Truman Proclamation was not incorporated into legislation until 1953[137], its international effect from the time that it was made

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131 Inter-American Juridical Committee, *Statement of Reasons accompanying the Draft Convention on Territorial Waters and Related Questions*, 30 July 1952, **Annex 117**, p. 5.

132 *Ibid*., pp. 5-6.

133 Ministry of Foreign Affairs of Peru, *Instrumentos Nacionales e Internacionales sobre Derecho del Mar*, 1971, **Annex 86**, p. 105.

134 Reply, para. 3.26, quoting E. Bernstein Carabantes, *Recuerdos de un diplomatíco. Haciendo camino, 1933-1957*, Santiago de Chile, Andrés Bello, 1984, pp. 102-103.

135 Proclamation No. 2667 of 28 September 1945, *Policy of the United States with respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf*, **Annex 88 to the Memorial**.

136 1947 Chilean Declaration, **Annex 27 to the Memorial**, first recital; 1947 Peruvian Supreme Decree, **Annex 6 to the Memorial**, fifth recital.

137 43 U.S.C. Subchapter III, Outer Continental Shelf Lands, Sec. 1331-1356, Ch. 345, 7 August 1953.

has been accepted by the Court. In the *North Sea Continental Shelf* cases, the Court observed that the Truman Proclamation "soon came to be regarded as the starting point of the positive law on the subject"[138]. The "subject" to which the Court was referring was a coastal State's "right to the continental shelf off its shores"[139] as a matter of international law. The United States of America has described the effect of the Truman Proclamation in similar terms in pleadings before the Court[140].

2.7. Similarly, the Mexican Presidential Declaration of October 1945 was an international claim to an extended maritime zone. It was issued by way of publication in the Mexican newspaper *El Universal*[141]. It concluded by noting that the "competent authorities" had been instructed "to proceed with the drafting of the appropriate legislation and the conclusion of such treaties as may be

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138 *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, para. 47; also see United Nations, *Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations*, with commentaries thereto, (58th session of the ILC (2006)), document A/61/10, **Annex 136**, Commentary to principle 3, para. (3), footnote 938; Commentary to principle 5, para. (2), footnote 954; United Nations, *Eighth Report on Unilateral Acts of States by Mr V. Rodríguez Cedeño, Special Rapporteur,* document A/CN.4/557, 26 May 2005, **Annex 134**, para. 10; also see paras 127 *et seq*., 170 and 182.

139 *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, para. 47. Also see *Maritime Delimitation in the Area Between Greenland and Jan Mayen, Judgment, I.C.J. Reports 1993*, Separate Opinion of Judge Ajibola, p. 294.

140 See *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), I.C.J. Pleadings, Vol. II*, Memorial of the United States, p. 56, para. 89 ("The United States extended its jurisdiction and control over the natural resources of its continental shelf by the well-known Truman Proclamation of 1945" (reference omitted)); p. 81, para. 134 ("[The Truman Proclamation] established for the United States exclusive jurisdiction and control over the natural resources of the seabed and subsoil of the shelf off its coasts extending to a depth of 100 fathoms"); p. 123, para. 199 ("The starting point for development of continental shelf doctrine was the Truman Proclamation of 1945" (reference omitted)); Reply of the United States, p. 392, para. 40 ("The purpose of the Truman Proclamation was to establish in general terms the sovereign rights and jurisdiction of the United States over its continental shelf").

141 See Declaration of the President of Mexico on the Continental Shelf of 29 October 1945, **Annex 89 to the Memorial**.

necessary."[142] There was no such legislation until 1960[143]. The Mexican proclamation was also a text relied upon by Chile and Peru as an antecedent in their 1947 proclamations[144].

2.8. The 1947 proclamations of Chile and Peru were in turn cited to by Costa Rica in its Law No. 116 of 27 July 1948[145] and Honduras in its Presidential Decree of 28 January 1950[146]. In those instruments, Costa Rica and Honduras recognized the Chilean and Peruvian proclamations as existing claims to the continental shelf and the waters above it[147].

2.9. To conclude, whatever their status in their domestic legal systems, there is no doubt that the unilateral proclamations made by Chile and Peru in 1947 constituted claims under international law.

2.10. Returning to the point that is relevant to this case — Peru's notification to Chile of Peru's use of the "line of the geographic parallels"[148] to measure the outer limit of the maritime zone it claimed — Peru simply asserts that "nothing suggests that the geographical parallels were also intended to serve as the northern and southern boundaries of Peru's zone."[149] Peru fails to grapple with the fact that, having claimed a maritime zone "measured following the line

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142 Declaration of the President of Mexico on the Continental Shelf of 29 October 1945, **Annex 89 to the Memorial**.

143 See Decree of 20 January 1960, *Official Journal of the Federation*, 20 January 1960; Law Regulating Paragraph 8 of Article 27 of the Constitution, relating to the Exclusive Economic Zone, *Official Journal of the Federation*, 13 February 1976.

144 1947 Chilean Declaration, **Annex 27 to the Memorial**, first recital; 1947 Peruvian Supreme Decree, **Annex 6 to the Memorial**, fifth recital.

145 Costa Rican Law No. 116 of 27 July 1948, *Official Journal of the Republic of Costa Rica No. 171*, 29 July 1948, **Annex 104**, second preambular paragraph.

146 Honduran Decree No. 25 of 28 January 1950, *Official Journal of the Republic of Honduras*, 22 January 1951, **Annex 105**.

147 *Ibid*.

148 1947 Peruvian Supreme Decree, **Annex 6 to the Memorial**, Art. 3.

149 Reply, para. 3.37.

of the geographic parallels"[150], there was simply no Peruvian maritime projection or claim southwards of the parallel of the point at which the land boundary between Chile and Peru reaches the sea. The Peruvian maritime zone was necessarily limited at that parallel: the limits of the zone were inherent in its definition[151]. Peru's Ambassador Bákula recognized this in 1985:

> "[A]ccording to Supreme Decree No. 781, the adjacent zone is measured 'following the line of the geographic parallels'; thus the separation line between the neighbouring countries also follows the line of the geographic parallel of the point at which the land frontier reaches the coast. In the case of Chile, for example, point 'Concordia' signals the separation parallel between the Peruvian and Chilean zones"[152].

2.11. It was on that foundation that the Parties addressed the issue of lateral limits at the Santiago Conference of 1952. As Peru's Congressional Committee of Foreign Affairs noted in its 1955 report recommending to the Peruvian Congress that it approve the Santiago Declaration of 1952 and the Agreement Relating to a Special Maritime Frontier Zone of 1954, Peru's 1947 Supreme Decree was a "necessary antecedent [*obligado antecedente*]" to the 1952 and 1954 agreements[153]. Consistently with that approach, Peru's 1955 Supreme Resolution, concerning accurate depiction of the seaward and lateral limits of Peru's maritime zone in cartographic works, cited "the Supreme Decree of

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150 1947 Peruvian Supreme Decree, **Annex 6 to the Memorial**, Art. 3.

151 For further discussion, and illustration, of this point, see paras 2.33 and 2.34, and **Figure 3 to the Counter-Memorial**, Vol. I, after p. 60.

152 J. M. Bákula, *El Dominio Marítimo del Perú*, 1985, **Annex 163**, p. 341.

153 Report of the Foreign Affairs Committee of the Peruvian Congress regarding the agreements and treaties signed by Peru, Chile and Ecuador at Santiago, on 18 August 1952; and at Lima, on 4 December 1954, 4 May 1955, **Annex 78**, p. 1.

1 August 1947 and the Joint Declaration signed in Santiago on 18 August 1952 by Peru, Chile and Ecuador"[154] as the bases for its maritime zone.

2.12. The unilateral proclamations made by Chile and Peru in 1947, and in particular Peru's use of the "line of the geographical parallels"[155] to measure its maritime projection, constitute circumstances of the conclusion of the Santiago Declaration and of the Agreement Relating to a Special Maritime Frontier Zone which are particularly apposite to their interpretation, in accordance with Article 32 of the Vienna Convention[156].

## Section 2. The Santiago Declaration of 1952

2.13. In its Reply, Peru states that its–

> "case rests on two basic propositions: *First*, that the Declaration of Santiago was not, and was not intended to be, a legally-binding instrument establishing international maritime boundaries. *Second*, that on a plain reading of the text of the Declaration of Santiago it is obvious that the text was a declaration of international maritime policy which (regardless of its legal status) cannot have the effect as an international boundary treaty that Chile tries to ascribe to it." [157]

2.14. In this Section, Chile addresses Peru's two basic propositions in turn. First, the treaty status of the Santiago Declaration is discussed. Second, the Santiago Declaration's delimitation of both the insular and continental (or "general") maritime zones of the States parties to that treaty is addressed.

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154 1955 Supreme Resolution, **Annex 9 to the Memorial**, preambular recital. For further discussion of Peru's 1955 Supreme Resolution, see paras 3.3-3.10 below.

155 1947 Peruvian Supreme Decree, **Annex 6 to the Memorial**, Art. 3.

156 See further, Counter-Memorial, paras 4.54-4.57.

157 Reply, para. 3.6.

## A. THE SANTIAGO DECLARATION HAS ALWAYS BEEN A TREATY

2.15. Chile, Ecuador and Peru jointly submitted the Santiago Declaration for registration with the United Nations as a treaty under Article 102 of the United Nations Charter in 1973[158]. The registration request concerned twelve instruments that had been adopted within the framework of the CPPS between 1952 and 1967, including the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone. As a result, the registration process took several years to be completed. In 1975, the United Nations Secretary-General informed Chile, Peru and Ecuador that further information was required in order for all twelve agreements to be registered in the *Treaty Series* pursuant to Article 102 of the United Nations Charter[159]. The three States, acting within the framework of the CPPS, agreed to send separate responses confirming that no reservations or declarations had been made to the 1952 agreements[160] and described the domestic-law ratification processes for three[161] of the 1954

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158 See Letter of 3 December 1973 from the Permanent Representatives of Peru and Chile and the Ecuadorean chargé d'affaires to the United Nations to the Secretary-General of the United Nations, **Annex 83 to the Counter-Memorial**.

159 Letter of 8 September 1975 from the Secretary-General of the United Nations to the Permanent Representative of Chile to the United Nations, **Annex 24**.

160 These were: the Santiago Declaration, **Annex 47 to the Memorial**; the Agreement Relating to the Organization of the Permanent Commission of the Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific, Santiago, signed and entered into force on 18 August 1952, 1006 *UNTS* 331, **Annex 48 to the Memorial**; the Joint Declaration concerning Fishing Problems in the South Pacific, Santiago, signed and entered into force on 18 August 1952, 1006 *UNTS* 317; and the Regulations for Maritime Hunting Operations in the Waters of the South Pacific, Santiago, signed and entered into force on 18 August 1952, 1006 *UNTS* 305, **Annex 49 to the Memorial**.

161 These were: the Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**; the Convention Relating to the Granting of Permits for the Exploitation of the Maritime Resources of the South Pacific, signed at Lima on 4 December 1954, **Annex 36 to the Reply**; and the Convention on the Ordinary Annual Meeting of the Permanent Commission of the South Pacific, signed at Lima on 4 December 1954, **Annex 37 to the Reply**.

agreements[162]. (On the same occasion, the three States also decided not to pursue registration of two of the twelve instruments, which dealt with internal organizational issues of the CPPS[163].) The three States submitted their respective responses to the United Nations in 1976[164]. In so doing, the three States specifically addressed their minds to the treaty status of the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone, confirming that these agreements had treaty status at their time of entry into force. Chile also provided to the United Nations an official declaration stating that (*inter alia*) the Santiago Declaration had entered into force upon signature[165].

2.16. The United Nations duly registered the Santiago Declaration as a treaty pursuant to Article 102 and recorded in the *Treaty Series* in 1976 that it had entered into force upon signature[166]. Peru did not indicate any disagreement about the status of the Santiago Declaration — in fact it had not done so until this case — and even now Peru does not allege that the United Nations registration in the *Treaty Series* was in error in stating that the Santiago Declaration entered into force on signature. Peru is silent in its Reply about how an instrument jointly registered as a treaty with the United Nations by the States parties, and which entered into force on signature, could be anything other than a treaty, and a treaty from the start.

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162 Extract from the Final Act of the XIIIth Ordinary Meeting of the Permanent Commission of the South Pacific in relation to the registration of the Agreements of the South Pacific with the United Nations, 9 January 1976, **Annex 15**.

163 *Ibid*., p. 114, para. 6.

164 Letter 4-2-30 of 21 April 1976 from the Permanent Mission of Ecuador to the United Nations to the Secretary-General of the United Nations, **Annex 28**; Letter No. 325/43 of 31 March 1976 from the Permanent Mission of Chile to the United Nations to the Secretary-General of the United Nations, **Annex 27**; Note No. 7-1-SG/22 of 6 May 1976 from the Permanent Representative of Peru to the United Nations to the Secretary-General of the United Nations, **Annex 29**.

165 Declaration of 16 September 1971 by Chile's Under-Secretary of Foreign Affairs, **Annex 52**; also see Letter of 31 March 2011 from the Secretariat of the United Nations to the Permanent Mission of Chile to the United Nations, **Annex 38**.

166 Santiago Declaration, **Annex 47 to the Memorial**, footnote 1.

2.17. In its Memorial, Peru asserted that the Santiago Declaration was conceived "not as a treaty but as a proclamation of the international maritime policy of the three States", and went on to say that on "ratification by Congress, it acquired the status of a treaty, and was subsequently registered with the United Nations."[167] Thus expressed, Chile understood Peru's argument to be that when signed, the Santiago Declaration was not a treaty, but that it subsequently was transformed into one by dint of the domestic-law ratification process. Chile responded to that argument in paragraphs 2.62-2.69 of its Counter-Memorial. In its Reply, Peru says for the first time that although ratification of the Santiago Declaration by Chile, Ecuador and Peru in 1954 and 1955 gave it "the status of a treaty"[168], this was only "in domestic political terms"[169] and did not "directly affect the status of the instrument as a matter of international law."[170] Peru states that following congressional approval in accordance with domestic law, and joint registration as a treaty with the United Nations, "the States concerned came to treat the Declaration as a treaty in their international relations."[171] That is to say, Peru now argues that the Santiago Declaration never actually became a treaty as a matter of international law[172]. In this way Peru seeks to introduce into the corpus of international law the novel category of instruments which are not treaties but are "treated as" such.

2.18. Peru's position now appears to be that when the Santiago Declaration was signed, it was "a policy declaration"[173] and that "[s]ubsequent developments, including domestic ratification and eventual registration with the United Nations"[174] did not alter the fact that as a matter of international law it remains

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167 Memorial, para. 4.70.

168 *Ibid*., para. 4.70; Reply, para. 3.161.

169 Reply, para. 3.161.

170 *Ibid*.

171 *Ibid*., para. 3.165.

172 *Ibid*., para. 3.144.

173 *Ibid*., para. 3.143.

174 *Ibid*., para. 3.144.

"a purely political instrument"[175]. The conclusion that Peru now appears to contend for is that the Santiago Declaration was not and has never become a treaty — i.e., that it does not meet the customary international law test reflected in Article 2(1)(a) of the Vienna Convention of being "an international agreement. . .governed by international law"[176]. Peru says that the parties gave the Santiago Declaration the *status* of a treaty under domestic law, and *treated* it as a treaty in their international relations, but it was not, and is not, a treaty for the purposes of international law.

2.19. Peru has not explained how an instrument could have the status of a treaty, and be treated as a treaty, but not actually be a treaty. If the parties confer the status of a treaty on an instrument and they treat it as a treaty in their international relations, then they clearly intend it actually to be a treaty, and the instrument is a treaty for the purposes of the Vienna Convention. An instrument operating as a treaty is a treaty. Peru's purpose in suggesting otherwise is obvious. Peru wishes to establish that the Santiago Declaration "was not an international agreement capable even in principle of establishing. . .a boundary"[177].

2.20. Without reiterating the analysis of the Santiago Declaration as a treaty appearing at paragraphs 2.58-2.69 of its Counter-Memorial, which it fully maintains, here Chile simply responds to points raised by Peru in its Reply.

*1. The Santiago Declaration is an Instrument of 'Positive Law'*

2.21. In support of its attempt to deny treaty status to the Santiago Declaration, Peru quotes as "very illustrative"[178] a statement made by Peru's Ambassador Bákula in an academic work published in 1985. Ambassador

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175 Reply, para. 3.144.

176 *Ibid*., para. 3.147.

177 *Ibid*., para. 3.143.

178 *Ibid*., para. 3.145.

Bákula referred to the "'purely declarative' nature of the documents signed in Santiago de Chile"[179]. Peru overlooks two points. First, in the very same sentence, Ambassador Bákula refers to these documents as "agreements"[180]. The fact that an agreement may be described as "declarative" does not negate its treaty status. So far as Chile and Peru were concerned, the Santiago Declaration was, as already noted, declarative of their 200M claims and their abutting but not overlapping zones. Second, Peru says nothing about the much earlier official statement made by Dr. Enrique García Sayán (who as Foreign Minister had co-signed Peru's 1947 proclamation) in his capacity as Peru's representative at the First United Nations Conference on the Law of the Sea in 1958. This statement was quoted at paragraph 2.64 of the Counter-Memorial, but Peru remained silent about it in the Reply. The official summary record of the conference indicates that Dr. García Sayán said: "The instruments of *positive law* which stated Peru's position were the decree of 1 August 1947 and the pact with Chile and Ecuador, referred to as the Santiago Declaration, signed in 1952"[181]. The verbatim record published in Peru[182] confirms that Dr. García Sayán clearly acknowledged that the Santiago Declaration was an international treaty. Prominent Peruvian authors have also considered the Santiago Declaration to be a treaty[183]. In fact, Peru's pleadings in this case mark the first time Peru has denied treaty status to the Santiago Declaration.

2.22. Chile has always held the view that the Santiago Declaration is part of positive law. For example, at the inaugural session of the 1954 CPPS Meeting,

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179 Reply, para. 3.145.

180 *Ibid*.

181 United Nations, Summary Record of the 9th Meeting of the Second Committee of the United Nations Conference on the Law of the Sea, 13 March 1958, 3.15 p.m., document A/CONF.13/40, **Annex 101 to the Memorial**, p. 17, para. 33 (emphasis added).

182 Intervention by Dr. García Sayán of Peru in the general debate of the Second Committee of the First United Nations Conference on the Law of the Sea, 13 March 1958, **Annex 14**, p. 50.

183 See, e.g., E. Ferrero Costa, *El Nuevo Derecho del Mar – El Perú y las 200 Millas*, 1979, **Annex 174**, pp. 60-61.

the Minister of Foreign Affairs of Chile referred to the Santiago Declaration as "the legal statement [*la expresión jurídica*]" formulated by Chile, Ecuador and Peru in 1952[184]. The same position was expressed in a communication to the ILC in 1956[185].

*2. The Santiago Declaration established Binding Legal Obligations*

2.23. Peru argues that the "actual terms of the Declaration of Santiago demonstrate beyond doubt that it was not intended to establish legally-binding obligations" and that it has "all the hallmarks of a statement of policy"[186]. In fact, however, the position is that the Santiago Declaration set forth binding obligations. Article II provides that:

> "[T]he Governments of Chile, Ecuador and Peru proclaim as a norm [*norma*] of their international maritime policy that they each possess exclusive sovereignty and jurisdiction over the sea along the coasts of their respective countries to a minimum distance of 200 nautical miles from these coasts."

The term *norma*, rendered above as "norm", denotes a rule. Article II sets forth an obligation for the States parties to maintain their 200M zones. That this

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184 Minutes of the Inaugural Session of the 1954 CPPS Meeting, 4 October 1954, **Annex 35 to the Counter-Memorial**, p. 3.

185 See Letter of 16 March 1956 from the Permanent Mission of Chile to the United Nations, reproduced in United Nations, *Comments by Governments on the Provisional Articles Concerning the Regime of the High Seas and the Draft Articles on the Regime of the Territorial Sea adopted by the International Law Commission at its Seventh Session* (8th session of the ILC (1956)), document A/CN.4/99/Add.1, **Annex 17**, pp. 42-43, where Chile referred to the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone of 1954 as "international agreements signed with Ecuador and Peru".

186 Reply, para. 3.150.

provision is related to the maintenance of the States parties' "international maritime policy"[187] does not make it any less of an obligation.

2.24. Further, the provisions which set forth the nature and geographic scope of the 200M zones of the States parties are worded in terms readily recognizable as the language of legal rights or obligations. Accordingly, Article III of the Santiago Declaration provides that the "exclusive jurisdiction and sovereignty over this maritime zone shall also encompass exclusive sovereignty and jurisdiction over the seabed and subsoil thereof."[188] These statements of legal rights pertaining to the maritime area include the continental shelf.

2.25. Article IV of the Santiago Declaration provides that:

> "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."

Article V is as follows:

> "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."

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187 Santiago Declaration, **Annex 47 to the Memorial**, Art. II.

188 *Ibid*., Art. III.

2.26. Self-evidently, these are statements of rights and obligations capable of being part of a treaty. Peru must agree, at least with respect to Article IV, given that it considers that Article IV limits the projection of Ecuadorean insular maritime zones as against the Peruvian continental maritime zone[189]. Article IV simply could not have performed that function unless it was a treaty obligation.

2.27. Peru emphasizes that Article VI of the Santiago Declaration announces the parties' 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."

Peru notes that this intention was announced to be for "the application of the principles contained in this Declaration"[190]. Peru argues that this provision "is explicit on the non-binding nature of the points contained in the Declaration of Santiago" because it envisages future agreements for the application of the "principles" contained in the Santiago Declaration[191].

2.28. It is a *non sequitur* to say that because further agreements were envisaged to implement the principles in the Santiago Declaration, the Declaration itself was not an agreement governed by international law[192]. The Santiago Declaration contained principles, and it envisaged subsequent, more

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189 E.g., Reply, paras 3.71 and 3.81.

190 Santiago Declaration, **Annex 47 to the Memorial**, Art. VI.

191 Reply, para. 3.150.

192 *Ibid*., paras 3.150-3.151. Cf. e.g., Convention for the Protection of the Ozone Layer, signed at Vienna on 22 March 1985, 1513 *UNTS* 323 (entered into force 22 September 1998), Art. 2(2) (". . .the Parties shall. . .(c) Co-operate in the formulation of agreed measures, procedures and standards for the implementation of this Convention, with a view to the adoption of protocols and annexes").

specific treaties in further implementation of those principles. This fact does not permit the conclusion that Peru now seeks to draw, which is that these principles were "only non-binding principles"[193]. The subsequent more specific treaties concluded in further implementation of the Santiago Declaration include the following:

— two instruments, signed in 1954 and 1955[194], relating to the issuance of permits for the exploitation of maritime resources (both living and non-living) in the maritime zones of Chile, Ecuador and Peru;

— the Agreement Relating to Measures of Supervision and Control in the Maritime Zones of the Signatory Countries of 1954[195]; and

— the Agreement Relating to a Special Maritime Frontier Zone of 1954, creating zones of tolerance on either side of the maritime boundaries that had already been delimited in the Santiago Declaration.

2.29. These implementing agreements proceeded on the basis that the States parties' individual maritime zones, and their maritime boundaries, had already been delimited in the Santiago Declaration. And all the above instruments were treaties under international law. It is strained to suggest that a number of treaties were entered into pursuant to an express provision in the Santiago Declaration and yet that Declaration itself was not a treaty.

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193 Reply, para. 3.152. Cf. e.g., International Convention on the Elimination of all forms of Racial Discrimination, signed at New York on 21 December 1965, 660 *UNTS* 195 (entered into force 4 January 1969), Art. 7 ("State Parties undertake to adopt immediate and effective measures. . .with a view to. . .propagating the purposes and principles of. . .this Convention").

194 Convention on the Granting of Permits for the Exploitation of the Maritime Resources in the South Pacific, signed at Lima on 4 December 1954, **Annex 36 to the Reply**; Regulation of Permits for the Exploitation of the Resources of the South Pacific, signed at Quito on 16 September 1955, **Annex 5 to the Counter-Memorial**.

195 **Annex 4 to the Counter-Memorial**.

2.30. The fact that the Santiago Declaration created rights and obligations for its signatories may further be seen from its invocation by those signatories in their bilateral discussions initiated by the United States of America about testing the validity of the 200M claims or proposing potential bilateral fisheries arrangements deviating from the Santiago Declaration. For example, on 2 May 1955 the United States Department of State recorded that the United States Ambassador to Ecuador had discussed with the President of that country about Ecuador's maritime claim. Ecuador resisted the proposal by the United States to submit the dispute to the International Court of Justice, and instead "insisted upon acting together with Peru and Chile in working out a solution of the problem." Ecuador "was not a free agent and was bound by the Santiago Declaration to consider this question with the other two signatories."[196] The same view was expressed by Chile in response to a subsequent proposal from the United States for an international fisheries conference[197]. Finally, in January 1963, the United States Embassy in Lima made a similar report to the Secretary of State concerning Peru's approach to the Santiago Declaration. The Embassy reported that it had been handed a note by the Secretary-General of the Peruvian Foreign Ministry in response to protests by the United States about seizure of, and fines levied on, United States ships. It also reported that Peru could not accept the protest by the United States about its exercise of jurisdiction beyond three nautical miles, and that Peru was "bound by its international obligations under [the] 1952 Santiago Declaration and other acts undertaken with Chile and Ecuador."[198]

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196 United States Department of State, Memorandum of Conversation of 2 May 1955 entitled "*Marginal Seas Conflict with Ecuador"*, **Annex 106**.

197 See Note No. A-762 of 10 June 1967 from the United States Embassy in Chile to the United States Department of State, with an unofficial translation of Letter No. 09700 of 8 June 1967 from the Chilean Ministry of Foreign Affairs, **Annex 19**.

198 Telegram No. 719 of 31 January 1963 from the United States Embassy in Peru to the Secretary of State of the United States, **Annex 18**.

2.31. Having previously treated the Santiago Declaration as a treaty, Peru cannot now credibly assert that it is not a treaty just because that contrary approach suits it better for the purposes of this litigation[199].

*3. The Title and Form of the Santiago Declaration*

2.32. Peru argues that the title and form of the Santiago Declaration indicate that it was not a treaty[200]. Chile dealt with this argument at paragraphs 2.62-2.69 of its Counter-Memorial, and nothing that Peru has said in its Reply affects the validity of those points. Peru now acknowledges that the Maroua Declaration, considered by the Court in the *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria*[201], effected a maritime-boundary delimitation[202]. What Peru does not record is that every one of the characteristics that Peru alleges show that the Santiago Declaration is not a treaty[203] was also extant in the Maroua Declaration[204]. These characteristics are also present in other treaties that States have chosen to title as a "declaration"[205]. These characteristics include that[206]:

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199 See *Territorial and Maritime Dispute (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007*, p. 859, paras 79-80; *Award of the President of the United States in Regard to the Validity of the Treaty of Limits between Costa Rica and Nicaragua of 15 July 1858*, 22 March 1888, *RIAA*, Vol. XXVII, pp. 203, 206.

200 Memorial, paras 4.70-4.71 and 4.81; Reply, paras 3.153-3.155.

201 See *Land and Maritime Boundary between Cameroon and Nigeria* (*Cameroon v. Nigeria; Equatorial Guinea intervening*), *Merits, Judgment, I.C.J. Reports 2002*, para. 263.

202 Reply, para. 3.153, footnote 291.

203 *Ibid*., para. 3.153.

204 Maroua Declaration between the United Republic of Cameroon and Nigeria, Maroua, signed and entered into force on 1 June 1975, 1237 *UNTS* 319, **Annex 5**.

205 See, e.g., Declaration by France and Monaco Concerning the Delimitation of the Territorial Waters of the Principality of Monaco, Paris, signed and entered into force on 20 April 1967, 1516 *UNTS* 131, **Annex 3**; the Tashkent Declaration between India and Pakistan, Tashkent, signed and entered into force on 10 January 1966, 560 *UNTS* 39, **Annex 2**; and the Declaration on the Construction of Main International

— the signatory States are not referred to as "Parties";

— the instrument contains "points" rather than "articles";

— the instrument does not conclude with a testimonium; and

— the individuals who signed the declaration were not explicitly stated to be signing "for" their government.

2.33. To take Peru's argument that the Santiago Declaration is not a treaty because it has "points" not "articles"[207] as an example: even if this were true, it would be irrelevant. But it is not true either. The individual parts of the Santiago Declaration are simply numbered: in the text of the Declaration they are not called articles, paragraphs, points, or anything else. In its Memorial, Peru referred to them as "paragraphs"[208]. Peru's letter to Ecuador of 9 June 2010 refers to "article IV"[209] of the Santiago Declaration. At the 1954 Inter-State Conference, the Peruvian and Chilean delegates both referred to "Article 4" of the Santiago Declaration[210]. Peru's 1955 Supreme Resolution implementing Article IV of the Santiago Declaration refers to it as "*inciso IV*", which is translated by Peru as "clause IV"[211]. It was only in its Reply of November 2010 that Peru began referring to the Santiago Declaration as having "points", and sought to draw a legal conclusion from that newly-assigned terminology.

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Traffic Arteries, Geneva, signed and entered into force on 16 September 1950, 92 *UNTS* 91, **Annex 1**.

206 See Reply, para. 3.153.

207 *Ibid*., para. 3.153(d).

208 See, e.g., Memorial, paras 4.75-4.80.

209 Letter of 9 June 2010 from the President of Peru to the President of Ecuador, **Annex 81 to the Reply**, second paragraph.

210 Minutes of the First Session of Commission I of the 1954 Inter-State Conference, 2 December 1954 at 10.00 a.m., **Annex 38 to the Counter-Memorial**, p. 3.

211 1955 Supreme Resolution, **Annex 9 to the Memorial**, second operative paragraph.

2.34. In conclusion, arguments about title and form simply cannot advance Peru's case. First, they have been invented in the course of this litigation. Second, as the Court held in *Maritime Delimitation and Territorial Questions between Qatar and Bahrain,* "international agreements may take a number of forms and be given a diversity of names."[212] As the *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria*[213] shows, that principle applies to maritime boundary treaties just as it does to other types of treaties.

*4. Ratification of the Santiago Declaration under Domestic Law*

2.35. Peru emphasizes in its Reply that the ratification of the Santiago Declaration in the domestic legal systems of the three States parties could not affect the objective status of the Santiago Declaration as a treaty under international law[214]. That is true. As noted above[215], the Santiago Declaration entered into force upon signature. Whatever subsequent acts of ratification or approval may have been necessary or desirable under the domestic legal systems of the States parties[216], they would be incapable of changing the nature or force of the instrument under international law, which was extant on signature.

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212 *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994*, p. 120, para. 23. Also see United Nations, *Report of the ILC to the United Nations General Assembly* (17th session of the ILC (1966)), document A/6309/Rev.1, Commentary to Draft Article 2 on the Law of Treaties, **Annex 121**, p. 188.

213 See *Land and Maritime Boundary between Cameroon and Nigeria* (*Cameroon v. Nigeria; Equatorial Guinea intervening*), *Merits, Judgment, I.C.J. Reports 2002*, para. 263.

214 Reply, para. 3.161.

215 See para. 2.16 above.

216 The acknowledgement during the ratification process in Peru of the boundary-delimitation component of the Santiago Declaration is discussed at paras 2.74-2.81 below.

*5. Relevance of Registration of the Santiago Declaration by the United Nations*

2.36. Article 102 of the United Nations Charter provides that: "Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it." Peru argues that it is somehow legally significant that Chile, Ecuador and Peru did not submit the Santiago Declaration for registration until 1973.

2.37. Peru acknowledges the relevance of the Court's decision in *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* in this context[217], and it may be helpful to provide the relevant passage from that judgment: "Non-registration or late registration. . .does not have any consequence for the actual validity of the agreement, which remains no less binding upon the parties"[218]. The fact that registration of the Santiago Declaration was delayed is of no consequence. The salient fact is, rather, that in jointly registering the Santiago Declaration with the United Nations as a treaty, all three contracting States specifically considered the status of the Declaration as a treaty, and acknowledged in concert that it was a treaty binding upon them[219]. That acknowledgement cannot be undone by unilateral assertions made decades later in pleadings before the Court designed to put in dispute a matter that previously was not.

2.38. Peru also cites as authority a paper by D. N. Hutchinson for the proposition that registration of an instrument is not conclusive as to its status[220]. Chile does not take issue with this proposition. But Chile also agrees with the legal proposition which is more apposite here and which is also set out in

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217 Reply, para. 3.158; also see paras 3.147 and 3.153.

218 *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994*, p. 122, para. 29.

219 See para. 2.15 above.

220 Reply, para. 3.167.

Professor Hutchinson's paper (though not quoted by Peru): "[The] act of transmitting the agreement for registration. . .will serve as evidence that [the transmitting State] considers the agreement in question to be a treaty"[221]. Here, all three signatories jointly submitted the Santiago Declaration for registration as a treaty under Article 102 of the United Nations Charter.

2.39. Peru suggests that the "primary reason for registration may well have been a desire further to enhance the political weight of the Declaration in the context of the hard-fought negotiations on the 200-nautical-mile maritime zone at UNCLOS III (1973-1982)."[222] If that is Peru's view, it only reinforces the point that Chile made in paragraphs 2.135-2.149 of the Counter-Memorial: having obtained significant political and economic benefits from the Santiago Declaration as a whole, Peru cannot now resile from the one aspect of the Santiago Declaration by which it no longer wishes to be bound, i.e., the maritime delimitation aspect[223]. In any event, after-the-event speculation about why the three States parties registered the Santiago Declaration as a treaty cannot alter the objective fact of registration and these States' acknowledgement of treaty status that follows from their having submitted it for registration under Article 102 of the United Nations Charter.

2.40. To conclude, Peru's attempts to discredit the Santiago Declaration by asserting that it was not a treaty, never became one as a matter of international law, and did not comport with imaginary formal requirements for boundary treaties, are mere distractions. The proper object of the debate concerning the Santiago Declaration is whether it did or did not effect a maritime delimitation between Chile and Peru. It is to that issue that this Rejoinder now turns.

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221 D. N. Hutchinson, "The Significance of the Registration or Non-Registration of an International Agreement in Determining Whether or Not it is a Treaty", in S. Davidson (ed.), *The Law of Treaties*, 2004, **Annex 177**, p. 265. Also see para. 2.15 above.

222 Reply, para. 3.168.

223 Also see para. 2.26 above on Peru's reliance on the legal obligations derived from the Santiago Declaration.

## B. The Delimitation Aspect of the Santiago Declaration

2.41. In the Santiago Declaration of 1952 the Parties reasserted in a multilateral instrument the individual maritime claims that they had already made unilaterally in 1947. The outer limit of those claims was of paramount importance, for the obvious reason that it had come under challenge in the international community. In the Santiago Declaration, the Parties were defending and consolidating their individual claims, as part of a tripartite effort also involving Ecuador. Since the lateral extent of each maritime zone was not controversial, it was far less prominent than the outer limit in the text of the Santiago Declaration. Peru even now acknowledges that lateral limits were indeed dealt with, at least with respect to insular projections.

2.42. Peru argues in its Reply that, first, the Santiago Declaration "was not an international agreement capable even in principle of establishing. . .a boundary"[224]. There is simply no support for this proposition. Customary international law prescribes no standard of specificity to determine the starting point, reference point, or the course of a maritime boundary. Second, Peru makes an internally inconsistent argument that Article IV of the Santiago Declaration "*limits* the maritime zones of islands; but it does not purport to *delimit* the zones between States in any other circumstances[225]. Peru contends that: "Specifically, and as a pragmatic and simple solution, the maritime zones which [islands] generate may be curtailed by lines of latitude in circumstances where they overlap with the 'general maritime zone' of another country that participated in formulating the declaration"[226].

2.43. Peru has never confronted the fundamental problem that arises on the interpretation of Article IV of the Santiago Declaration that it has created for

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224 Reply, para. 3.143.

225 *Ibid*., para. 3.71.

226 *Ibid*., para. 3.72.

these proceedings. Why would the three States deal with the overlap between insular zones of one State and the continental zone of an adjacent State, but not with the supposed overlap between the continental zones generated by those States? Overlap between an insular zone and a continental zone was only one aspect of lateral limits, and concerned primarily only two of the three States parties, Peru and Ecuador. The fact is that all three States parties were claiming "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"[227]. This "exclusive sovereignty and jurisdiction" encompassed "the seabed and subsoil thereof"[228]. This claim applied first and foremost to the "general maritime zone"[229] appertaining to the continental coast of each of the three States parties to the Santiago Declaration. And that is what the three States parties delimited. As Dr. Marisol Agüero Colunga of Peru wrote in 1990, a contrary interpretation would be "nonsensical"[230], and this is graphically illustrated at paragraphs 2.60 *et seq*. below.

2.44. As the *travaux préparatoires* confirm, the maritime projection of islands received particular attention in Article IV of the Santiago Declaration, because that was the sole situation which could give rise to an overlap of the maritime projections of adjacent States. The maritime projection of the continent was conceived as proceeding seawards along lines of latitude. Peru explicitly formulated its claim in that manner in 1947 and neither Chile nor Ecuador objected to it. For this reason, the maritime projection of the continental zones of the adjacent States abutted but did not overlap, and the limits of each State's zone were inherent in the definition of it as extending seaward along lines of latitude. The delimitation between them was thus both simple and

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227 Santiago Declaration, **Annex 47 to the Memorial**, Art. II.

228 *Ibid*., Art. III.

229 *Ibid*., Art. IV.

230 M. F. Agüero Colunga, *Delimitación Marítima del Perú con Ecuador y con Chile*, 1990, **Annex 156**, pp. 101-102. On Dr. Agüero Colunga's writings see further paras 5.28-5.29 below.

uncontroversial. It followed the line of latitude where the adjacent zones abutted. This point was developed in paragraphs 2.32-2.42 and 2.80-2.88 of the Counter-Memorial. Peru's answer is to persist in its Reply with the bare contention that by the time of the Santiago Declaration Peru was using an arcs-of-circles methodology, rather than a form of *tracé parallèle*, to determine its continental maritime projection, thus creating overlap with Chile's maritime zone. It is therefore necessary to return to this issue.

*1. Peru's Maritime Projection at the Time of the Santiago Declaration*

2.45. Peru asserts that an "ordinary reading" of the Santiago Declaration is "that the maritime reach of the mainland coasts would radiate in all directions for 200 nautical miles as an 'arcs of circles' entitlement"[231]. That is incorrect. The three States parties agreed in Article II of the Santiago Declaration that they possessed "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"[232]. Article II did not indicate that this 200M zone would be measured following an envelope-of-arcs-of-circles approach.

2.46. As noted above, in 1947 Peru had explicitly indicated the method by which it measured the outer limit of its maritime projection. It was measured "following the line of the geographical parallels"[233]. This created a maritime zone bounded laterally by two parallels of latitude and in respect of its seaward limit following a form of *tracé parallèle*[234]. In other words, this was a method which consisted "of drawing the outer limit of the belt of territorial waters by following the coast in all its sinuosities"[235]. As international law stood in 1952,

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231 Reply, para. 3.74.

232 Santiago Declaration, **Annex 47 to the Memorial**, Art. II.

233 1947 Peruvian Supreme Decree, **Annex 6 to the Memorial**, Art. 3.

234 This is further explained at para. 4.58 of Peru's Memorial and para. 2.33 of Chile's Counter-Memorial.

235 *Fisheries Case (United Kingdom v. Norway), Judgment, I.C.J. Reports 1951*, p. 128.

there was overwhelming support for the *tracé parallèle* method to define the outer limit of the maritime projection of a continental territory[236]. Confirmation of Peru's position in 1947 and 1952 is that Peru was still using that same conception of its maritime zone in 1955. In that year it issued a Supreme Resolution specifying the seaward and lateral limits of the Peruvian maritime zone for the purposes of depicting it in cartographic and geodesic work. In so doing, Peru specifically cited "the Supreme Decree of 1 August 1947 and the Joint Declaration signed in Santiago on 18 August 1952 by Peru, Chile and Ecuador"[237] as the bases for its maritime zone. This 1955 Supreme Resolution defined the outer limit of Peru's maritime zone as follows:

> "The said zone shall be limited at sea by a line parallel to the Peruvian coast and at a constant distance of 200 nautical miles from it"[238].

2.47. Since the outer limit was "a line parallel to the Peruvian coast", as a simple matter of geometry, the limit cannot have been determined using an envelope of arcs of circles. This can be seen on **Figure 4.1** of Peru's own Memorial[239], as it can be seen on **Figure 9** of the Counter-Memorial[240]. An outer limit determined using arcs of circles will never be "a line parallel to the. . .coast". Thus, in its 1955 Supreme Resolution, Peru maintained the conception of maritime projection that it had adopted in its 1947 Supreme Decree, and specifically referred to the Santiago Declaration in doing so. As it had been in 1947, and in 1952, in 1955 the "constant distance" of 200M was measured along parallels of latitude.

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236 See Appendix A to this Rejoinder.

237 1955 Supreme Resolution, **Annex 9 to the Memorial**, preambular recital.

238 *Ibid*., first operative paragraph.

239 Memorial, Vol. IV, p. 23.

240 Counter-Memorial, Vol. I, after p. 102.

2.48. Peru asserts that its Petroleum Law of 1952[241], issued some months before the Santiago Declaration, adopted an envelope-of-arcs-of-circles approach, such that by the time of the Santiago Declaration, the *tracé parallèle* established by the 1947 Supreme Decree had been abandoned[242]. There is no evidence for the proposition, and Peru blithely ignores its own Supreme Resolution of 1955, three years after the Petroleum Law and the Santiago Declaration. In fact, the Petroleum Law is silent on the method of measuring the 200M outer limit. It simply refers to "an imaginary line drawn seaward at a constant distance of 200 miles from the low-water line along the continental coast"[243]. It does not say how that constant distance is to be measured. The 1947 Supreme Decree had already done so. The Petroleum Law was an act implementing the maritime zone already proclaimed. That Law neither purported to set forth Peru's maritime zone nor resulted in changing it.

2.49. A more recent document of the Peruvian Navy confirms how, until this litigation, Peru viewed the method of measuring seaward projection used in its 1952 Petroleum Law. In November 2000, the Peruvian Minister of Defence, communicating the position of the Navy on a possible ratification of UNCLOS, wrote to the Peruvian Minister of Foreign Affairs noting that such ratification and the enactment of the proposed Law on Baselines, "would allow the correction of the existing error in the current legislation [citing the 1955 Supreme Resolution and the 1952 Petroleum Law] in measuring the 200 miles following the parallels of the points of the coast."[244] In this communication the Peruvian Navy explicitly acknowledged that the Petroleum Law of 1952 "measur[ed] the

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241 Law No. 11780 of 12 March 1952: Petroleum Law, **Annex 8 to the Memorial**, Art. 14(4).

242 Reply, para. 3.60.

243 Law No. 11780 of 12 March 1952: Petroleum Law, **Annex 8 to the Memorial**, Art. 14(4).

244 Letter No. 4626 SGMD-D of 21 November 2000 from the Minister of Defence of Peru to the Minister of Foreign Affairs of Peru, **Annex 189 to the Counter-Memorial**, para. (m).

200 miles following the parallels of the points of the coast"[245]. It is inconceivable that in 2000 Peru's Navy did not know how Peru was measuring the outer limit of its 200M "maritime dominion". Chile discussed this in paragraph 2.121 of the Counter-Memorial. Peru was silent in reply.

2.50. In 2005, the Peruvian Baselines Law was enacted, in accordance with the expressed desire of the Navy. It states in Article 4 that:

> "In accordance with the Political Constitution of the State, the outer limit of the maritime domain [*dominio marítimo*] of Peru is traced in such a manner that *every point of the mentioned outer limit is at a distance of two hundred nautical miles from the nearest baselines point*, pursuant to the delimitation criteria established in International Law."[246] (Emphasis added.)

That is an envelope-of-arcs-of-circles provision. It reflects the approach taken in Article 4 of UNCLOS concerning the outer limit of the territorial sea (except that it uses 200M instead of 12M). No earlier document published by Peru contains a provision that sets forth the same method.

2.51. Peru has pleaded an interpretation of its Petroleum Law that is not supported by the text of the instrument, which is inconsistent with both the 1947 Supreme Decree which preceded it and the 1955 Supreme Resolution which followed it, and which is directly contradicted by an internal Peruvian Government communication of 2000 from the Minister of Defence to the Minister of Foreign Affairs. Peru asserts that the Petroleum Law used an

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[245] "Apreciaciones a Convención de las Naciones Unidas sobre el Derecho del Mar", appearing as Annex (1) to Letter No. 4626 SGMD-D of 21 November 2000 from the Minister of Defence of Peru to the Minister of Foreign Affairs of Peru, **Annex 189 to the Counter-Memorial**, para. (m). The Minister of Defence considered that this method of measurement was an "error", which could be corrected by ratifying UNCLOS and by the enactment of new domestic legislation.

[246] Law No. 28621 of 3 November 2005: Baselines Law of the Maritime Dominion of Peru, **Annex 23 to the Memorial**, Art. 4.

envelope-of-arcs-of-circles methodology because it wishes now to deny the historical fact that when the Santiago Declaration was agreed, Peru and Chile had maritime zones that abutted, but did not overlap, thus explaining why lateral limits between the Parties were so uncontroversial in 1952.

2.52. Ecuador also understood that the fact that Peru's 1947 Supreme Decree projected Peru's maritime zone "following the line of the geographical parallels" was an "antecedent" to the Santiago Declaration, in which "[t]his criterion was adopted", "by the three countries", to constitute an "international maritime frontier" that was a line "of easy and simple recognition"[247]. Peru cannot in the course of these proceedings unilaterally revise this agreed basis for the creation of its maritime boundaries.

*2. Minutes of the 1952 Santiago Conference*

2.53. The 1952 Minutes were formally signed by the delegates of Chile, Ecuador and Peru. They record the discussions in the Legal Affairs Commission of the 1952 Santiago Conference, which developed the text of the Santiago Declaration. The Minutes record that the Ecuadorean delegate–

> "observed that it would be advisable to clarify [the provision which became Article IV of the Santiago Declaration] in order to prevent any misinterpretation of the interference zone in the case of islands, and suggested that the declaration be drawn *on the basis that the boundary line of the jurisdictional zone of each country be the respective parallel from the point at which the borders of the countries touches or reaches the sea*."[248] (Emphasis added.)

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247 Memorandum No. 3-DST of 20 January 1969 from the Ministry of Foreign Affairs of Ecuador to the Embassy of Argentina in Ecuador, **Annex 22**, discussed further at paras 4.12-4.13 below.

248 Minutes of the First Session of the Legal Affairs Commission of the 1952 Conference, 11 August 1952 at 4.00 p.m., **Annex 56 to the Memorial**, p. 2.

Immediately afterwards the 1952 Minutes record that:

> "All the delegates agreed to this proposal."[249]

2.54. The 1952 Minutes specifically record that:

> "The motion to keep special record of the foregoing statements in the Minutes of this Commission's Sessions was unanimously agreed, in order to serve as a true record of the extent, sense and accuracy of interpretation of this part of the Declaration. It was also agreed to provide each delegation with an authenticated copy of these Minutes so that it is attached to the declaration for the purposes each country may deem appropriate."[250]

So described, it is clear that the States parties recorded in the 1952 Minutes "their precise intentions regarding the meaning attached by them to a particular article of the treaty."[251] The 1952 Minutes "illuminat[e] a common understanding as to the meaning"[252] of Article IV of the Santiago Declaration, rather than simply recording the individual positions of the States parties in the negotiations. Article 31(2) of the Vienna Convention, reflecting customary

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249 Minutes of the First Session of the Legal Affairs Commission of the 1952 Conference, 11 August 1952 at 4.00 p.m., **Annex 56 to the Memorial**, p. 2. The original Spanish text reads as follows: "Todos los delegados estuvieron conformes con esta proposición."

250 Minutes of the Second Session of the Legal Affairs Commission of the 1952 Conference, 12 August 1952 at 4.00 p.m., **Annex 34 to the Counter-Memorial**, p. 3.

251 *Conditions of Admission of a State to Membership in the United Nations, Advisory Opinion, I.C.J. Reports 1948*, Dissenting Opinion of Judges Basdevant, Winiarski, McNair and Read, para. 12.

252 Cf. *Arbitration regarding the Iron Rhine ("Ijzeren Rijn") Railway between the Kingdom of Belgium and the Kingdom of the Netherlands*, Award, 24 May 2005, *RIAA*, Vol. XXVII, para. 48.

international law[253], compels reference to this context in interpreting Article IV of the Santiago Declaration.

2.55. The 1952 Minutes, as a "true record" of the agreed "interpretation" of the Santiago Declaration, confirm that the delegates from the three countries agreed that "the boundary line" was to be "the respective parallel from the point at which the borders of the countries touches or reaches the sea". It was on this agreed basis that Article IV of the Santiago Declaration was drafted. Chile emphasized this agreement at paragraph 2.78 of its Counter-Memorial. Peru says nothing about it in its Reply.

2.56. It was necessary to clarify how the boundary would operate with respect to islands for two reasons. First, the issue of islands was brought to the fore with Ecuador's participation. Secondly, maritime projection of islands was conceived as being separate and different from the maritime projection of the continent: continental projection was conceived since 1947 as being constrained by the zone of adjacent States, while insular projection was not necessarily so. Thus, no clarification or amplification was needed regarding the operation of the boundary with respect to continental projections. Again, since the continental landmass projected along lines of latitude, the continental projections of adjacent States abutted, but did not overlap, at the parallel of latitude passing through the point where the relevant land boundary reached the sea. The clarification that was made with respect to islands was that although they would have a 200M radial projection as an ordinary rule, that projection would be cut short if it met the parallel of latitude constituting the "boundary line"[254]. Indeed, the existence

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253 See the authorities mentioned at footnote 761 of the Counter-Memorial.

254 See the observations made by Mr. Fernández, the Ecuadorean delegate to the 1952 Conference: Minutes of the First Session of the Legal Affairs Commission of the 1952 Conference, 11 August 1952 at 4.00 p.m., **Annex 56 to the Memorial**, p. 2.

of the boundary line was the only logical reason for curtailing insular zones[255], as will presently be seen.

*3. The Text of Article IV of the Santiago Declaration*

2.57. No attempt will be made here to repeat the extensive analysis in Chapter IV of Chile's Counter-Memorial of the proper interpretation of Article IV of the Santiago Declaration following the interpretive process mandated by Articles 31 and 32 of the Vienna Convention. Here Chile limits itself to brief supplementary observations on Article IV of the Santiago Declaration. Those observations are made on the basis that "the Court cannot base itself on a purely grammatical interpretation of the text. It must seek the interpretation which is in harmony with a natural and reasonable way of reading the text, having due regard to the intention of"[256] the Parties.

2.58. For the purposes of this litigation, Peru has proffered an argument that Article IV serves only to limit the radial projection of islands within 200M of the parallel of latitude passing through the point where the land boundary reaches the sea, on the one hand, and the continental maritime projection of the adjacent State, on the other hand.

2.59. Article IV refers to islands "situated less than 200 nautical miles from the general maritime zone belonging to another" declarant country. How could one determine whether an island was 200M from the general maritime zone of another declarant country if the maritime boundary between the general maritime zones of adjacent declarant countries was not delimited? On Peru's interpretation of Article IV, this determination simply could not be made. Yet Article IV

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255 Dr. Agüero Colunga, one of the Peruvian authors relied upon by Peru, and the co-ordinator of Peru's legal team in these proceedings, agreed in her 1990 monograph that this was the logical reason: see M. F. Agüero Colunga, *Delimitación Marítima del Perú con Ecuador y con Chile*, 1990, **Annex 156**, pp. 101-102, quoted at para. 5.28 below.

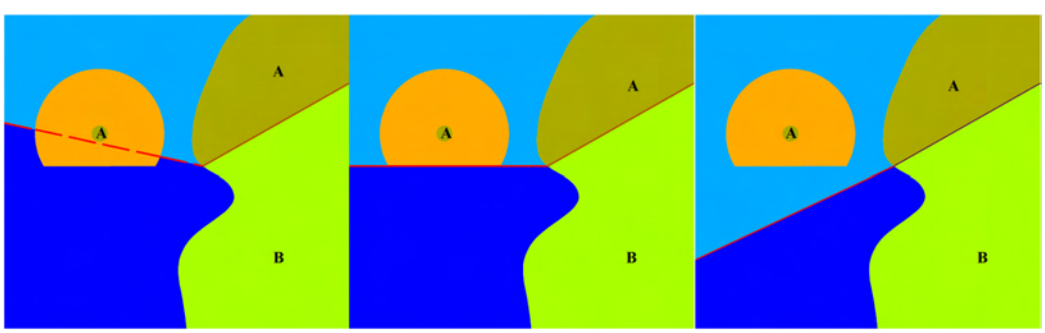
256 *Anglo-Iranian Oil Co. Case, Jurisdiction, Judgment, I.C.J. Reports 1952*, p. 104.

requires it to be made. Chile highlighted this problem at paragraph 2.83 of the Counter-Memorial. Peru has not responded.

2.60. The treatment of islands in Article IV of the Santiago Declaration was a specific implementation of the maritime boundary that also applied between the "general" (i.e., continental) maritime zones of adjacent States. That boundary was, in the terms of Article IV, "the parallel at the point at which the land frontier of the States concerned reaches the sea". As Chile observed at paragraph 2.82 of the Counter-Memorial:

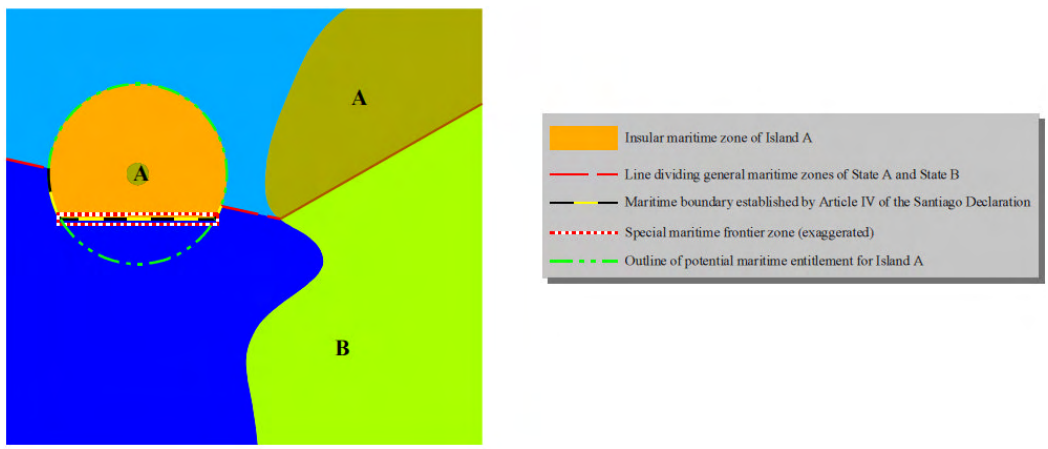
> "[T]he use of parallels of latitude to limit the zone of an 'island or group of islands' presupposes, and may be explained only on the basis, that the general maritime zones are also delimited by the same parallels of latitude. . .if the general maritime zones of adjacent States A and B are delimited in any way other than by a parallel of latitude starting from the seaward terminus of the land boundary. . .there is no reason to delimit the insular maritime zone of State A. . .by using that parallel of latitude".

The following diagram was included to illustrate this point graphically:



In the above-quoted extract Chile simply noted that which a distinguished Peruvian specialist recently described as the reading commanded by logic[257]. Chile used the term "presupposes" to indicate exactly the same point of logic.

2.61. Today, however, Peru makes three arguments in its Reply. First, Peru says that Article IV of the Santiago Declaration is a "protective provision" for islands[258]. Peru illustrates its reading by an adaptation of the box on the left of Chile's diagram, on **Figure R-3.1** of its Reply[259]. Peru's illustration is reproduced below, with minor adaptations:




2.62. Peru says that its delimitation line "would describe an irregular course"[260], "sav[ing]" for the island of State A a "wedge-shaped maritime space"[261]. Peru's delimitation line follows a highly improbable and impractical course. As may be seen in the diagram, it includes a segment consisting of two arcs of unequal lengths, joined by a straight line which follows a parallel of

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257 See M. F. Agüero Colunga, *Delimitación Marítima del Perú con Ecuador y con Chile*, 1990, **Annex 156**, pp. 101-102, quoted at para. 5.28 below.

258 See Reply, para. 3.96.

259 *Ibid*., p. 135.

260 *Ibid*., para. 3.97.

261 *Ibid*., para. 3.98.

latitude. That "irregular" segment is shown as a black/yellow line in the illustration above.

2.63. Peru fails to explain why the States parties to the Santiago Declaration would have agreed to "protect" insular zones by using a parallel of latitude in the first place, and then choose to do so in a way resulting in an eccentric boundary line — and yet, for all that, failing to give to islands the full effect of their maritime zones. What is more, if Peru's reading were correct, much of the Agreement on the Special Maritime Frontier Zone[262] would have practically no effect. This agreement is "an integral and supplementary part" of the Santiago Declaration[263]. In its Article 1 it provides for a "special zone. . .on either side of the parallel which constitutes the maritime boundary between the two countries". If Peru's present reading were to be credited, the Article 1 zone would apply only on part of one segment of the boundary line, as shown in the illustration above. Suffice it to say that never has such a reading been advanced by any of the States parties.

2.64. The truth is, Peru stands Article IV of the Santiago Declaration on its head. The provision does not "protect" insular zones. It does the converse. It preserves continental maritime zones to their full extent, i.e., up to the boundary parallel, confining any overlapping insular zones to the other side of the boundary parallel. This is illustrated in the middle box of Chile's diagram, which is reproduced at paragraph 2.60 above.

2.65. Peru's second argument is to say that if there had been an "established, presupposed maritime boundary", as Peru understands Chile to claim, "[t]here would have been no need to reiterate this point with point IV of the Declaration"[264]. As has already been explained, however, Chile's position is not

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262 See Counter-Memorial, paras 2.197 *et seq*. and Rejoinder, paras 2.99-2.122.

263 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, Art. 4.

264 Reply, para. 3.94.

that a boundary delimitation had been effected in 1947. Rather, Chile's position is that in 1947 neither Chile nor Ecuador had objected to Peru's claimed 200M maritime zone, which was conceived as bounded by parallels of latitude to the north and the south[265]. In the Santiago Declaration, when the three States parties memorialized their maritime claims in an international treaty, they agreed on parallels of latitude as their lateral boundaries. Indeed, the *travaux préparatoires* of both the Santiago Declaration and the Agreement on the Special Maritime Frontier Zone show a concern to leave a clear record that parallels of latitude are the lateral boundaries between the States parties, both as between two continental maritime zones and as between an insular zone and a continental maritime zone[266].

2.66. Finally, Peru comments on the box on the right-hand side of Chile's diagram (paragraph 2.60 above) that it is irrelevant. Peru says that in this case there is no overlap between the insular zone of State A and the continental zone of State B, and hence no need for State A to limit the insular zone at a parallel of latitude. Peru's point is valid on the diagram but wrong in principle. A slightly revised diagram is provided below. As may be seen from it, if the boundary between the continental maritime zones of State A and State B is a line other than a parallel of latitude, and that line curtails the insular zone of State A in the slightest, then Peru's reading of Article IV would limit the insular zone at the parallel even though the boundary line between the continental maritime zones would not require such a limitation.

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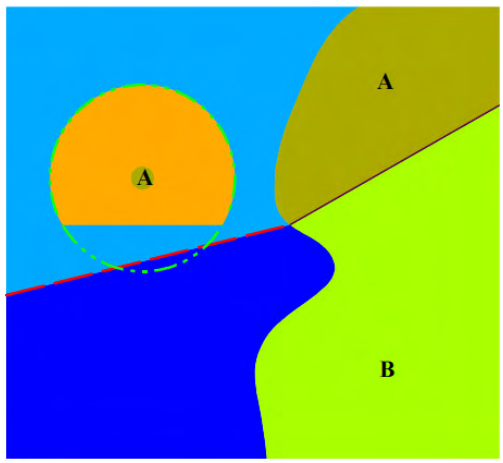
265 See Counter-Memorial, paras 2.34-2.39.

266 See paras 2.53 *et seq*. above and paras 2.87 *et seq*. below.




2.67. In sum, Peru's newly proposed reading of Article IV of the Santiago Declaration leads to eccentric and improbable results.

2.68. Based on its newly-minted reading of Article IV, Peru says that since there are islands within 200M of the parallel of latitude passing through the point where the Ecuador-Peru land boundary reaches the sea, but not within 200M of the point where the Chile-Peru land boundary reaches the sea, Article IV applies between Ecuador and Peru, but not as between Chile and Peru.

2.69. For all the reasons that Chile has advanced, this interpretation is incorrect. Nonetheless, the interpretation of Article IV that Peru has advanced in these proceedings would also create a maritime boundary between Chile and Peru constituted by the parallel of latitude passing through the point where their land boundary reaches the sea.

2.70. The small Chilean island of Alacrán lies close to the coast of Arica, 7.6M south of the parallel constituting the maritime boundary. It has an area of 0.08 km². In 1967 it was joined to Arica by a causeway. When the Santiago Declaration was concluded in 1952, there was no such connection. Alacrán was shown as an island on the Peruvian chart of 1968, which is partially reproduced in **Figure 65**.

2.71. There are also a number of small Peruvian islands within 200M of the parallel of latitude passing through Hito No. 1. Although Peru does not acknowledge the existence of these small islands in its pleadings in this case, the Peruvian Government's National Institute for Statistics and Information records two of these small islands, Isla Casca and Isla Blanca, in its list of Peru's insular territories, and specifies that they have a surface area of 0.15 km², which is 15 hectares[267]. As shown on **Figure 65**, the 200M radial maritime projections created by these islands pursuant to the terms of the Santiago Declaration would, on Peru's present interpretation of Article IV, create a maritime boundary extending further seaward than Chile's 200M maritime zones, although not to the full extent of Peru's 200M "maritime dominion" measured following an arcs-of-circles methodology. Even on Peru's incorrect interpretation of Article IV of the Santiago Declaration the existing maritime boundary rests on the Parties' agreement for almost all of its length.

2.72. These small islands are mentioned here for the sake of completeness. None of them was mentioned in the negotiating record related to the 1952 Santiago Declaration. Nor were any of the islands shown by Peru on **Figure 2.2** of its Memorial, which Peru now says distinguish the Ecuador-Peru situation from the Chile-Peru situation. The only islands that were mentioned in the context of the Santiago Declaration were Ecuador's Galápagos Islands, which would only have become relevant to issues of lateral delimitation if Peru had extended its maritime zone further seaward, as it was permitted to do under Article II of the Santiago Declaration[268].

2.73. The true position is that the States parties to the Santiago Declaration agreed that their maritime zones were to be limited by the parallels of latitude passing through the points at which their land frontiers reached the sea. They

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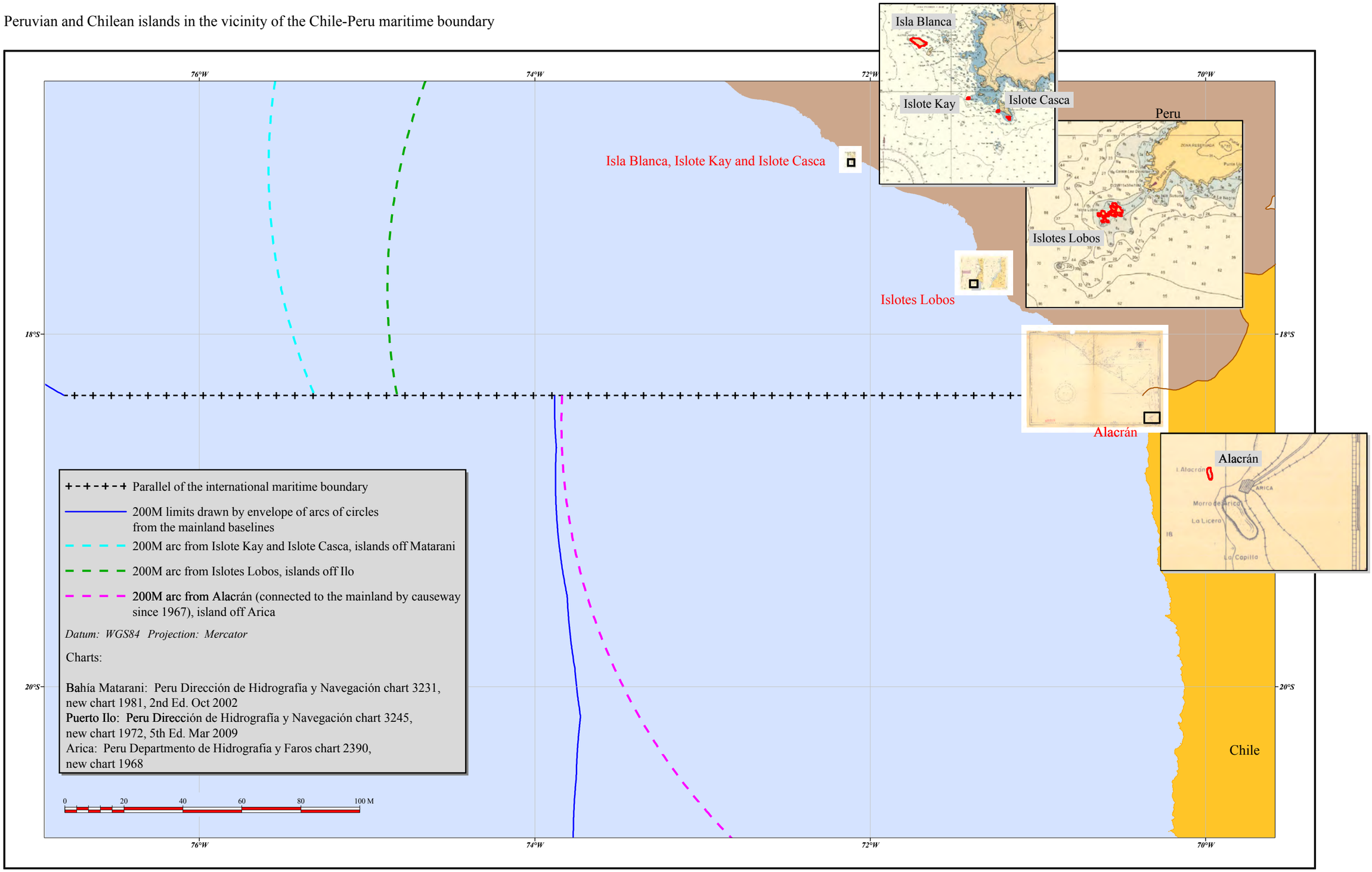
267 National Institute of Statistics and Information of Peru, *Perú: Compendio Estadístico 2008*, **Annex 102**, p. 24, section 1.11.

268 See Counter-Memorial, paras 2.85-2.86.

Peruvian and Chilean islands in the vicinity of the Chile-Peru maritime boundary




*Prepared for the Ministry of Foreign Affairs, Chile, by UKHO Law of the Sea Consultancy*

also agreed that islands would have a 200M radial projection, except if they were within 200M of the boundary of the continental zones, in which case they would be limited by that same, all-purpose, boundary.

*4. Acknowledgement of the Maritime Boundary by Peru's Congress*

2.74. In its Memorial Peru stated that when "reference was made to the [Santiago] Declaration in the Congresses of Peru and Chile in the 1950s there was no mention of it being a boundary agreement"[269]. In the Counter-Memorial, Chile pointed out that in fact, when addressing Congress concerning congressional approval of the Santiago Declaration, a member of the Foreign Affairs Committee of Congress, Dr. Peña Prado, had specifically acknowledged that the objectives of the 1952 and 1954 conferences included "establishing the maritime boundaries between the signatory countries"[270]. There can be no argument about the meaning of that statement. Unable to cast doubt on the content of the statement, in the Reply Peru attempted to discredit its source. Seizing on the fact that the speech was published in a Peruvian newspaper of record, *La Crónica*, two days after it was delivered, Peru refers to it as "a newspaper report of a speech supposedly as delivered before the Peruvian Congress"[271]. Peru asserts that "the Official Records of the Peruvian Congress for 5 May 1955 contain no such reference"[272].

2.75. The congressional record produced by Peru is not a verbatim record of the debate, but rather summary minutes of interventions made[273]. Chile sought access to the verbatim record of the debate at Peru's Congressional Library, but was told that although verbatim records of debates from 1947 to 1955 inclusive

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269 Memorial, para. 4.81.

270 J. M. Peña Prado, Address to the Congress of Peru, reproduced in *La Crónica*, Lima, 7 May 1955, **Annex 246 to the Counter-Memorial**.

271 Reply, para. 3.162.

272 *Ibid*.

273 See Records of the Second 1954 Extraordinary Legislature of the Peruvian Congress, Second Session held on Thursday 5 May 1955, **Annex 7 to the Reply**.

existed, they were missing. Chile has been able to obtain from a library outside Peru a subsequent issue of the *Diario de los Debates del Congreso Nacional*[274] that commences on 28 July 1955, but has been unable to locate the equivalent publication for 5 May 1955.

2.76. The summary minutes that Peru has produced for 5 May 1955 make clear that in his capacity as a member of the Foreign Affairs Committee, Dr. Peña Prado did address the Peruvian Congress that day on the topic of the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone, and that he "explained the scope of the clauses" of those two treaties[275]. That explanation is contained in the reproduction of his speech which is at Annex 246 to Chile's Counter-Memorial. That document is not, as Peru alleges, "a newspaper report"[276]. It is a verbatim record of the speech Dr. Peña Prado delivered in Congress, contemporaneously reproduced in full in a newspaper of record.

2.77. The editorial component of the publication is as follows:

> "We hereinafter reproduce the important intervention of Deputy Dr. Juan Manuel Peña Prado during the session of Congress held on the 5th instant. We offer it after having obtained it in its entirety; in it, the distinguished congressman reaffirms the historical, legal and fair stance on the 200 nautical miles of the Peruvian Coast. Dr. Peña Prado, with a wide experience in the field, essentially supported the report of the Foreign Affairs Committee of the Congress, when the agreements and conventions signed between the Governments of Peru, Chile and Ecuador on the Exploitation and Conservation of the Maritime Resources of the South Pacific were put to

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274 See República Peruana, *Diario de los Debates del Congreso Nacional*, Vol. I, 1955, **Annex 81**.

275 Records of the Second 1954 Extraordinary Legislature of the Peruvian Congress, Second Session held on Thursday 5 May 1955, **Annex 7 to the Reply**, p. 7.

276 Reply, para. 3.162.

> debate. Here is the text of this important intervention. . .”[277]

2.78. Following this, Dr. Peña Prado’s speech was produced verbatim. In it he explicitly refers to the establishment of “the maritime boundaries between the signatory countries”[278]. No correction was ever published. Chile submits that the Court should accept as authoritative the verbatim record reproduced in *La Crónica*, unless and until Peru makes available to the Court the full official verbatim report of the debate in Congress on 5 May 1955, rather than just the summary report.

2.79. Even the summary report that Peru has produced makes clear that the lateral limits of Peru’s “maritime dominion” were discussed in Congress on 5 May 1955. Not only does it describe Dr. Peña Prado as having “explained the scope of the clauses”[279] of the two treaties placed before Congress for its approval, Deputy Vildoso Rejas clearly also discussed Peru’s maritime boundaries. He is recorded as having made an intervention in which he declared himself “in favour of the Agreements”[280]. He is further recorded as having “formulated some comments on the first clause of the Agreement Relating to a Special Maritime Frontier Zone”[281], which is the article that refers to “the parallel which constitutes the maritime boundary between the two countries”[282]. He then “advocated for the provision contained therein to be combined with. . .the supreme decree No.-23 of 12 January 1955, specifying the

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277 J. M. Peña Prado, Address to the Congress of Peru, reproduced in *La Crónica*, Lima, 7 May 1955, **Annex 246 to the Counter-Memorial**, with a transcript and translation of this portion produced as **Annex 138** to this Rejoinder, pp. 74-75.

278 *Ibid.*

279 Records of the Second 1954 Extraordinary Legislature of the Peruvian Congress, Second Session held on Thursday 5 May 1955, **Annex 7 to the Reply**, p. 7.

280 Records of the Second 1954 Extraordinary Legislature of the Peruvian Congress, Second Session held on Thursday 5 May 1955, **Annex 79**, p. 7.

281 *Ibid*.

282 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, Art. 1.

cartographic technique for the drawing of the 200-mile distance line."[283] In so doing, Deputy Vildoso Rejas explicitly linked the maritime boundary referred to in the Agreement Relating to a Special Maritime Frontier Zone to Peru's Supreme Decree, promulgated less than four months prior to his comments, which had specified how to measure the lateral and outer limits of Peru's maritime zone. As noted above at paragraph 1.29, Peru's Supreme Decree No. 23 of 1955 provided that "[i]n accordance with clause IV of the Declaration of Santiago" the line constituting the lateral limit of Peru's maritime zone, "may not extend beyond that of the corresponding parallel at the point where the frontier of Peru reaches the sea."[284] Peru's domestic congressional approval of the Santiago Declaration and the Agreement Relating to the Special Maritime Frontier Zone in May 1955 followed swiftly after Peru's specification of the lateral and seaward limits of its maritime zone for cartographic and geodesic purposes, including by reference to Article IV of the Santiago Declaration, in January of that same year.

2.80. Having sought to disregard Dr. Peña Prado's speech, Peru says in its Reply that "[w]hat is significant" is that "the 'Report' issued by the Foreign Affairs Committee of the Congress at the time of the approval of said instruments by the legislative branch. . .contained no reference to maritime boundaries."[285] This is inaccurate. Peru refers to Annex 96 to its Memorial. That annex contains three pages only of the eleven-page report. None of those three pages contains a reference to the maritime boundary. The full report appears as Annex 6 to Peru's Reply. None of the extracts translated by Peru contains any reference to the maritime boundary. However, at page 10 of the original Spanish version, which Peru chose not to translate, the Report discusses the Agreement Relating to the Special Maritime Frontier Zone of 1954 and specifically refers to the "maritime frontiers between the neighbouring States [*fronteras marítimas*

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283 Records of the Second 1954 Extraordinary Legislature of the Peruvian Congress, Second Session held on Thursday 5 May 1955, **Annex 79**, p. 7.

284 1955 Supreme Resolution, **Annex 9 to the Memorial**, Art. 2.

285 Reply, para. 3.163; and also see Reply, para. 3.127.

*entre los Estados vecinos*]"[286]. Not only is this an explicit reference to maritime frontiers, it uses the plural "*fronteras*" — rather than the singular "*frontera*" which would have been consistent with Peru's present argument that the 1954 Agreement referred only to the maritime frontier between Ecuador and Peru[287]. Peru's own contemporaneous record shows its present argument to have been created for the purposes of this litigation.

2.81. Even the summary Report which Peru has made available shows that in 1955, Peru's congressional Foreign Affairs Committee considered Peru to have two maritime frontiers, one in the north with Ecuador and one in the south with Chile, and that the Committee recommended to Congress that it approve the 1952 and 1954 agreements on that basis. In Legislative Resolution No. 12305 of 6 May 1955 Peru's Congress duly gave its approval simultaneously to the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone. The Peruvian President "enacted" that resolution of Congress on 10 May 1955[288].

### *5. Regional Discussion in 1952 of the Obligation to Establish Maritime Boundaries by Agreement*

2.82. In its Reply Peru states:

> "Today a State may claim an exclusive economic zone, knowing what that claim entails and knowing that it implies a need eventually to define the limits of its exclusive economic zone as against the zones of neighbouring States — although even now such defined

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286 Report of the Foreign Affairs Committee of the Congress of Peru on the Agreements and Treaties signed by Peru, Chile and Ecuador in Santiago, on 18 August 1952 and in Lima, 4 December 1954, **Annex 6 to the Reply**, with a translation of this portion produced as **Annex 78** to this Rejoinder.

287 See Memorial, paras 4.103-4.104; Counter-Memorial, paras 2.202-2.205; Reply, para. 4.15; and para. 2.112 below.

288 Legislative Resolution No. 12305 of 6 May 1955, enacted by the Peruvian President on 10 May 1955, **Annex 10 to the Memorial**.

> limits are usually negotiated over long periods, and usually years after the initial claim is made. But sixty years ago the South American States were feeling their way in uncertain, unchartered waters, without the benefit of the clarity brought by later developments on the law of the sea."[289]

2.83. This rhetoric is designed to support Peru's assertion that "there was no intention on the part of the authors of the Declaration of Santiago to agree upon one or more international maritime boundaries in 1952."[290]

2.84. The awareness of the Parties in 1952 of the need to delimit their extended maritime zones can be seen from their sponsorship of the Draft Convention on Territorial Waters and Related Questions[291]. That Draft Convention was adopted by the Inter-American Juridical Committee on 30 July 1952, weeks only before the Santiago Declaration was signed in August 1952. Article 1 of the Draft Convention set forth a right for the coastal State to the physical continental shelf and to the waters above it. Article 2 set forth a right "to establish an area of protection, control and economic exploitation, to a distance of two hundred nautical miles" in the waters along a State's coast. Article 3 addressed the question of delimitation by agreement in the following terms:

> "When two or more continental shelves, or areas of protection and control, overlap, the States to which they belong shall limit the scope of their sovereignty or jurisdiction by mutual agreement or by submitting the

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289 Reply, para. 4.7.

290 *Ibid*., para. 4.8.

291 Inter-American Juridical Committee, "Draft Convention on Territorial Waters and Related Questions", 30 July 1952, **Annex 117**. On the contribution of Latin American States to the development of the law of the sea more generally, see F. V. García-Amador, "The Latin American Contribution to Development of the Law of the Sea", *American Journal of International Law*, Vol. 68, 1972, p. 33; A. A. Mawdsley, "The Latin American Contribution to the Modern Law of the Sea", *Netherlands International Law Review*, Vol. XXXIX, p. 63; F. Orrego Vicuña, "The Exclusive Economic Zone in a Latin American Perspective: An Introduction", in F. Orrego Vicuña (ed.), *The Exclusive Economic Zone: A Latin American Perspective*, 1984, p. 1.

> question to the procedures established by the Parties for the settlement of international controversies."[292]

2.85. The 1952 Draft Convention was sponsored by Argentina, Chile, Mexico and Peru. Although it was never adopted as a treaty, it demonstrates that immediately prior to the Santiago Declaration, both Chile and Peru were advocating a legal obligation to delimit the extended maritime zones of adjacent States by agreement. Such an obligation was subsequently adopted in the Geneva Convention on the Continental Shelf of 1958, which provided in relevant part that:

> "Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. . . ."[293]

2.86. Consistently with the position that they had taken at the Inter-American Juridical Committee just weeks earlier, in the Santiago Declaration of August 1952, Chile and Peru delimited their maritime boundary by agreement.

## Section 3. The Agreements of 1954 Confirming the Maritime Boundary

### A. THE 1954 MINUTES

2.87. In the course of negotiating the 1954 Complementary Convention and the 1954 Agreement Relating to a Special Maritime Frontier Zone, Chile, Ecuador and Peru agreed that they had already delimited their maritime boundaries in 1952.

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[292] Inter-American Juridical Committee, "Draft Convention on Territorial Waters and Related Questions", 30 July 1952, **Annex 117**, Art. 3.

[293] Convention on the Continental Shelf, signed at Geneva on 29 April 1958, 499 *UNTS* 311 (entered into force on 10 June 1964), Art. 6(2).

2.88. This is a point of fundamental importance to these proceedings. The 1954 Minutes formally record the agreement of Chile, Ecuador and Peru on the correct interpretation of Article IV of the Santiago Declaration. Pursuant to the rule of customary international law reflected in Article 31(3)(a) of the Vienna Convention, this agreement must be taken into account in the interpretation of Article IV of the Santiago Declaration. It constitutes an authentic interpretation of Article IV, of equal value and status to a joint interpretive declaration or protocol. Yet when Peru annexed to its Memorial the very page of the 1954 Minutes on which this agreement is recorded, it redacted the part of the page recording the agreement[294]. In response to the discussion of this agreement in Chile's Counter-Memorial, Peru considers the 1954 Minutes only in cursory fashion, at paragraphs 4.14-4.16 and 4.18 of its Reply. Since Chile has already described the agreement recorded in the 1954 Minutes in detail in the Counter-Memorial[295], here Chile simply responds to the few assertions that Peru made in its Reply.

2.89. First, Peru attacks the agreement on the basis that it related to the "dividing line of the jurisdictional waters", not "maritime boundaries"[296]. Peru says that there "is no mention of what Chile refers to in its Counter-Memorial as the 'maritime boundaries'."[297]

2.90. In the Santiago Declaration the parties had claimed "exclusive sovereignty and jurisdiction" over the sea, the seabed and its subsoil[298]. The Complementary Convention recited that they had already "proclaimed their Sovereignty" up to a minimum distance of 200M, over "the sea", including "the

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294 See further para. 1.23 above.

295 For detailed discussion of this agreement see Counter-Memorial, paras 2.189-2.201 and 4.47-4.53.

296 Reply, para. 4.14.

297 *Ibid*.

298 Santiago Declaration, **Annex 47 to the Memorial**, Arts II and III.

corresponding soil and subsoil"[299]. In Article 1 of the Complementary Convention, the three States recorded their "defence of the principle of Sovereignty over the Maritime Zone up to a minimum distance of 200 nautical miles, including the soil and subsoil thereof."[300] Clearly, when the three States were discussing the Complementary Convention, they were discussing a comprehensive maritime claim, not some sort of limited functional jurisdiction concerned only with fisheries.

2.91. The States parties to the 1954 agreements used a number of different terms to refer to the delimitation of their maritime zones including, as Peru emphasizes, "the dividing line of the jurisdictional waters"[301]. In a three-day period, delegates are recorded in the Minutes as also having used the terms "the dividing line of the jurisdictional sea"[302], simply "the dividing line"[303], the "maritime jurisdictional boundary"[304] and "the maritime boundary between the neighbouring signatory countries"[305]. These terms were used interchangeably to refer to the maritime boundary between the maritime zones of sovereignty and jurisdiction claimed by the three States in the Santiago Declaration and affirmed in the Complementary Convention.

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299 Complementary Convention to the Declaration of Sovereignty on the Two-Hundred-Mile Maritime Zone (the ***Complementary Convention***), **Annex 51 to the Memorial**, first recital.

300 *Ibid*., Art. 1.

301 Minutes of the First Session of Commission I of the 1954 Inter-State Conference, 2 December 1954 at 10.00 a.m., **Annex 38 to the Counter-Memorial**, p. 3.

302 *Ibid*.

303 Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, p. 1.

304 Final Minutes of the 1954 Inter-State Conference, 4 December 1954, **Annex 40 to the Counter-Memorial**, p. 12.

305 Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, p. 7.

2.92. Peru's assertion that there "is no mention of what Chile refers to in its Counter-Memorial as the 'maritime boundaries'" is simply false[306]. The term "maritime boundary [*límite marítimo*]" is used twice in the 1954 Minutes, at pages 7 and 8 of the Minutes of the Second Session of Commission I of the 1954 Inter-State Conference[307].

2.93. Peru's second attack on the agreement recorded in the 1954 Minutes is to ask: "What, precisely, was 'settled' and when was it settled?"[308] The Minutes state what was settled:

> "[T]hat the three countries deemed the matter on the dividing line of the jurisdictional waters settled and that said line was the parallel starting at the point at which the land frontier between both countries reaches the sea."[309]

The Minutes also state when this was settled. The Peruvian delegate insisted that "this agreement was already established in the Conference of Santiago"[310].

2.94. Peru's third attack is to assert that: "The minutes do not reveal what the Ecuadorean [delegate's] specific concern was in initiating the debate."[311] In fact, the Minutes record precisely the Ecuadorean delegate's concern. It was to exclude the prospect of a reading of the text of Article IV of the Santiago Declaration that is exactly the one that Peru now advances in these proceedings. The Minutes record that the Ecuadorean delegate, Mr. Salvador Lara–

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306 Reply, para. 4.14.

307 Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, pp. 7 and 8.

308 Reply, para. 4.15.

309 Minutes of the First Session of Commission I of the 1954 Inter-State Conference, 2 December 1954 at 10.00 a.m., **Annex 38 to the Counter-Memorial**, p. 3.

310 *Ibid*., p. 4.

311 Reply, para. 4.15.

> "moved for the inclusion in this [Complementary] Convention of a complementary article clarifying the concept of the dividing line of the jurisdictional sea, which has already been explained at the Conference of Santiago, but which would not be redundant to include herein."[312]

The Ecuadorean delegate wished to confirm that the "dividing line of the jurisdictional sea" had already been agreed in the Santiago Declaration, and did not relate only to "delimitation of waters regarding the islands"[313].

2.95. The 1954 Minutes record that the Peruvian and Chilean delegates said in response that they "believe that Article 4 of the Declaration of Santiago is clear enough and, therefore, does not require further explanation."[314]

2.96. Peru's final attack on the agreement is to ask in its Reply: "But what was clear?"[315] What was clear was that which the Ecuadorean delegate wished to confirm: "that the three countries deemed the matter on the dividing line of the jurisdictional waters settled and that said line was the parallel starting at the point at which the land frontier between both countries reaches the sea."[316]

2.97. All three States agreed on that point. Since Chile and Peru considered it unnecessary to include an additional article in the Complementary Convention to confirm that the maritime boundaries applied for all purposes, and not just with respect to islands, Ecuador consented to the (Chilean) Chairman's compromise suggestion that the agreement of the three States be memorialized in the Minutes. When the draft Minutes were read out at the beginning of the next

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312 Minutes of the First Session of Commission I of the 1954 Inter-State Conference, 2 December 1954 at 10.00 a.m., **Annex 38 to the Counter-Memorial**, p. 3.

313 *Ibid*.

314 *Ibid*.

315 Reply, para. 4.16.

316 Minutes of the First Session of Commission I of the 1954 Inter-State Conference, 2 December 1954 at 10.00 a.m., **Annex 38 to the Counter-Memorial**, p. 3.

session, they were changed so that they did not record merely the Ecuadorean statement, but rather "that the three countries had agreed on the concept of a dividing line of the jurisdictional sea"[317]. With this agreement recorded, the delegates of each State then signed the Minutes.

2.98. One may see the immediate implementation of this agreement in Article 1 of the Agreement Relating to a Special Maritime Frontier Zone, to which the three States then turned in the course of the 1954 Inter-State Conference[318]. Article 1 specifically refers to "the parallel which constitutes a maritime boundary". The 1954 Minutes record that–

> "the concept already declared in Santiago that the parallel starting at the boundary point on the coast constitutes the maritime boundary between the neighbouring signatory countries, was incorporated into this article."[319]

## B. THE 1954 AGREEMENT RELATING TO A SPECIAL MARITIME FRONTIER ZONE

### *1. The Title of the Agreement*

2.99. In its Reply, Peru takes issue with the abbreviated title that Chile used in the Counter-Memorial for the 1954 Agreement Relating to a Special Maritime Frontier Zone[320]. Chile had referred to it as the "Lima Agreement". The only purpose of the abbreviation was brevity. Peru having objected, in this Rejoinder Chile refers to the agreement by its full title: the Agreement Relating to a Special Maritime Frontier Zone. What Chile objects to, as pointed out in the Counter-

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317 Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, p. 1.

318 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, Art. 1.

319 Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, p. 7.

320 Reply, para. 4.4.

Memorial[321], is that the abbreviation that Peru has created for these proceedings, the "Agreement on a Special Zone", simply omits the two words that are problematic for Peru's case: "Maritime Frontier".

2.100. With those two words included, the title of the 1954 Agreement is itself evidence of the pre-existing maritime frontier between the Parties, since it "mention[ed] 'the frontier'. . .with no suggestion of there being any uncertainty about it"[322]. This is confirmed by the contents of the agreement.

*2. The Purpose and Effect of the Agreement*

2.101. In the recitals, Chile, Ecuador and Peru referred to their experience with frequent "violations of the maritime frontier between adjacent States"[323].

2.102. In Article 1 the three States parties established "a special zone" commencing "12 nautical miles from the coast" and "extending to a breadth of 10 nautical miles". This zone was established "on either side of the parallel which constitutes a maritime boundary between the two countries"[324]. It is depicted on **Figure 11** of the Counter-Memorial[325], and reproduced here with slight adjustment as **Figure 66**. As that Figure demonstrates, the zone of tolerance (or buffer zone) did not commence until 12M from the coastlines of the parties. It then proceeded to the full 200M extent of each party's maritime zone.

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321 Counter-Memorial, para. 2.202.

322 *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 35, para. 66.

323 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, first recital.

324 *Ibid*., Art. 1.

325 Counter-Memorial, Vol. I, after p. 144.

*3. "The maritime boundary between the two countries"*

2.103. Article 1 of the Agreement Relating to a Special Maritime Frontier Zone reads as follows:

> "A special zone is hereby established, at a distance of 12 nautical miles from the coast, extending to a breadth of 10 nautical miles on either side of the parallel which constitutes the maritime boundary between the two countries."

2.104. The ordinary meaning of "the two countries" in Article 1 is *the two States on either side of the parallel of latitude constituting the maritime boundary between those two States*[326]. In its Memorial, Peru argued that "the two countries" referred only to Ecuador and Peru[327]. Peru maintains this submission in paragraph 4.15 of its Reply. Peru asserts there that Chile's reference in the Counter-Memorial to "adjacent states" is incorrect. That is clearly not so.

2.105. The term "adjacent States" appears in the first recital to the Agreement Relating to a Special Maritime Frontier Zone, which refers to the "maritime frontier between adjacent States"[328]. Article 2 also refers to "adjacent countries"[329]. Moreover, the 1954 Minutes, quoted above, refer to the incorporation in Article 1 of the "concept already declared in Santiago"[330]. That concept was described as being "the maritime boundary between the

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326 See further Counter-Memorial, paras 2.202-2.205.

327 See Memorial, paras 4.103-4.104.

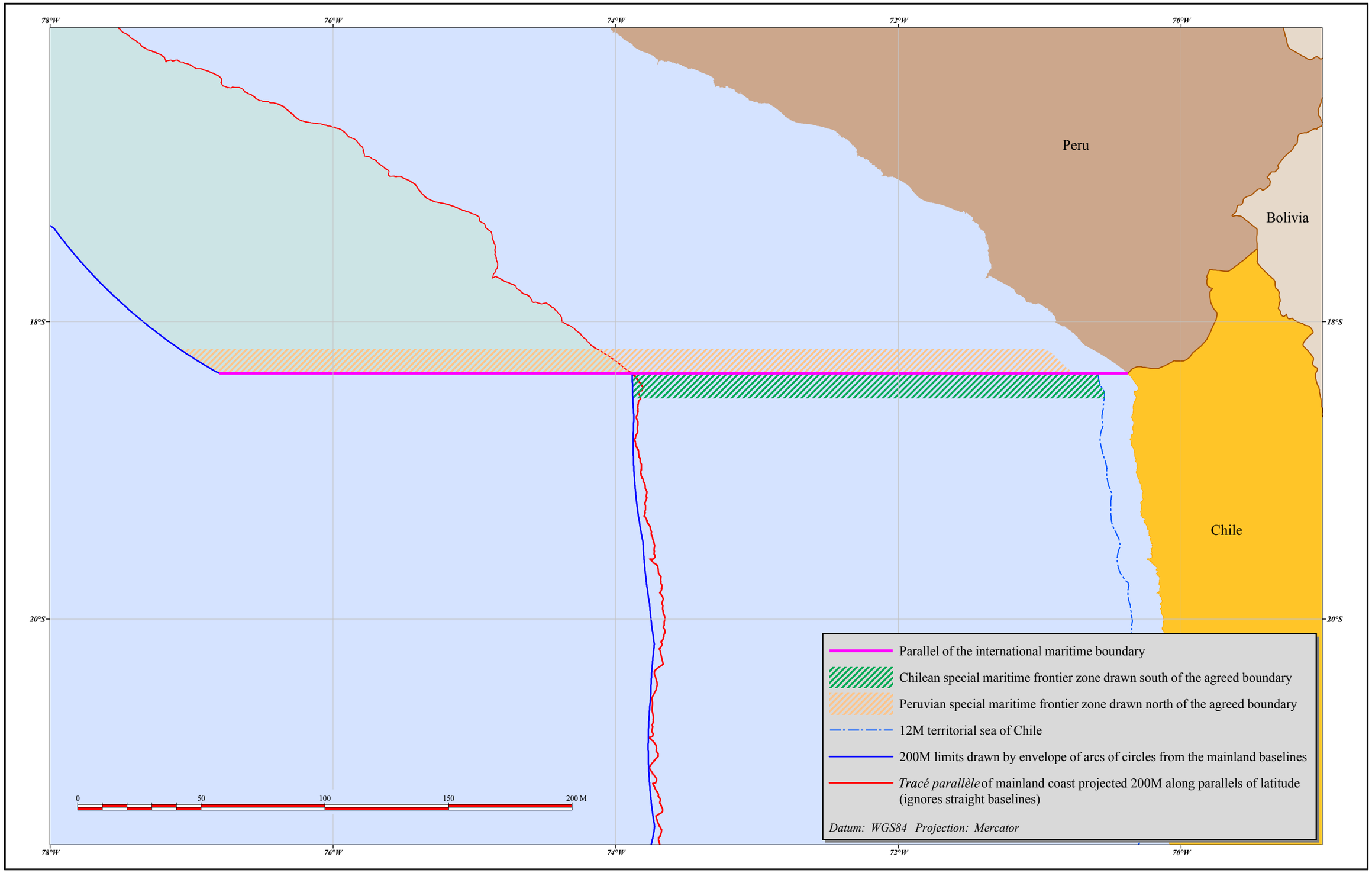
328 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, first recital.

329 *Ibid*., Art. 2.

330 Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, p. 7.

**Figure 66**

Chile-Peru Special Maritime Frontier Zone under the Agreement Relating to a Special Maritime Frontier Zone of 1954




*Prepared for the Ministry of Foreign Affairs, Chile, by UKHO Law of the Sea Consultancy*

neighbouring signatory countries", which was constituted by the "parallel starting at the boundary point on the coast"[331].

2.106. There is no reference to islands anywhere in the Agreement Relating to a Special Maritime Frontier Zone, and so Peru is deprived of the argument that it mounts in connection with Article IV of the Santiago Declaration. In its Memorial Peru thus sought to defend the proposition that an agreement between *three* adjacent States, which had the sole express purpose of creating maritime frontier zones, applied between only *two* of the three States parties[332]. But this proposition is indefensible, and in its Reply Peru changed tack: "It seems clear that the focus was on the waters between Peru and Ecuador, although the buffer zone arrangement was in fact also applied in the waters between Peru and Chile."[333] The diffidence of language betrays an attempt to reconcile what cannot be reconciled. There is no evidence cited for the proposition that the buffer zone applied between Peru and Chile on some sort of *de facto* basis, rather than because it was established by the Agreement Relating to a Special Maritime Frontier Zone. This assertion was created for this litigation, and is inconsistent with Peru's historical position.

2.107. To recall, in 1962 Peru complained to Chile about "the frequency with which Chilean fishing vessels have trespassed into Peruvian waters" and stated that–

> "the Government of Peru, taking strongly into account the sense and provisions of the 'Agreement Relating to a Special Maritime Frontier Zone', signed in Lima on 4 December 1954, wishes the Government of Chile, particularly through the competent authorities of the port of Arica, to adopt measures to put an end to these

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331 Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, p. 7.

332 See Memorial, paras 4.103-4.104.

333 Reply, para. 4.15.

> illegitimate incursions, and that the owners of fishing vessels be notified that they must refrain from continuing to fish north of the Peru-Chile frontier."[334]

2.108. Peru is silent on this memorandum in its Reply, even though Chile relied on it at paragraphs 2.219, 3.12, 3.14, 3.41 and 4.33 of the Counter-Memorial. In 1962 Peru clearly considered that the Agreement Relating to a Special Maritime Frontier Zone applied between Chile and Peru, and acknowledged the Parties' maritime "frontier", north of which Chilean vessels were committing "illegitimate incursions".

2.109. In the Bákula Memorandum submitted to Chile in 1986, Peru acknowledged "the existence of a special zone — established by the 'Agreement Relating to a Maritime Frontier Zone' — [which] referred to the line of the parallel of the point reached by the land border"[335]. While Peru suggested that "an extensive interpretation" of the Agreement Relating to a Special Maritime Frontier Zone "could generate a notorious situation of inequity and risk"[336], there was no attempt to deny the applicability of this agreement as between Chile and Peru, or to suppress the words "Maritime Frontier" from its title. Those developments only came in Peru's pleadings in this case.

2.110. The acknowledgement in Ambassador Bákula's 1986 Memorandum of the applicability between Chile and Peru of the Agreement Relating to a Special Maritime Frontier Zone is consistent with the official position that he had taken earlier as Secretary-General of the CPPS. In that role, in May of 1978 he conducted an "Evaluation of the Agreements of the CPPS"[337]. These

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334 Memorandum No. 5-4-M/64 of 20 December 1962 from the Peruvian Embassy in Chile to the Ministry of Foreign Affairs of Chile, **Annex 73 to the Counter-Memorial**.

335 Bákula Memorandum, **Annex 76 to the Memorial**, second page (third paragraph).

336 *Ibid*.

337 Ambassador Juan Miguel Bákula, Secretary-General, *Evaluación de los Convenios de la CPPS*, May 1978, **Annex 129**.

"Agreements" included both the 1952 Santiago Declaration and the 1954 Agreement Relating to a Special Maritime Frontier Zone. Both of these treaties were discussed as part of Ambassador Bákula's "analysis of the legal texts in force"[338]. Ambassador Bákula recorded that the 1954 Agreement was for "the purposes of preventing innocent and inadvertent violations of the *maritime frontiers*" and that, to that end, zones of tolerance were established "on either side of the parallel which constitutes the maritime boundary between the two countries."[339] Ambassador Bákula considered then that the 1954 Agreement would "not require any modification" and that its being in force "contributes to the avoidance of incidents between the three contracting governments: Chile, Ecuador and Peru."[340] Clearly, as Secretary-General of the CPPS, Ambassador Bákula considered that the Agreement Relating to a Special Maritime Frontier Zone applied to both "maritime frontiers" governed by this trilateral Agreement, not just to the maritime frontier between Ecuador and Peru.

2.111. That the position which Peru asserts in these proceedings represents a recent change may also be seen from a letter of April 2000 from the Consul General of Peru in Arica to the Harbour Master of Arica, an officer of the Chilean Navy. Chile had apprehended a Peruvian vessel in Chile's EEZ. The Peruvian Consul General specifically invoked "the Agreement relating to a 'Special Maritime Frontier Zone' signed by Peru, Chile and Ecuador in 1954" as having established a 10M zone of tolerance[341]. Peru considered that the Peruvian vessel had been within this zone "without catch" and so was protected by the

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338 Ambassador Juan Miguel Bákula, Secretary-General, *Evaluación de los Convenios de la CPPS*, May 1978, **Annex 129**, p. 9.

339 *Ibid*., p. 15 (emphasis added).

340 *Ibid*.

341 Letter No. 8-10-B-C/0169-2000 of 14 April 2000 from the Consul General of Peru in Arica to the Harbour Master of Arica, **Annex 91 to the Counter-Memorial**.

1954 Agreement[342]. Peru is silent on this incident in its Reply, even though Chile relied on it at paragraph 3.98 of the Counter-Memorial.

2.112. As already noted at paragraph 2.80 above, Peru's position in April 2000 is consistent with the 1955 Report of the Foreign Affairs Committee of the Congress of Peru recommending congressional approval of the Santiago Declaration and of the Agreement Relating to a Special Maritime Frontier Zone. The Report referred to "maritime frontiers between the neighbouring States [*fronteras marítimas entre los Estados vecinos*]"[343].

*4. The Treatment of Existing Lateral Boundaries in 1954*

2.113. In its Reply Peru states that: "In 1954, as in 1952, the primary focus was on maintaining a united front on the part of Chile, Ecuador and Peru towards third States, rather than upon the development of an internal legal régime defining their rights *inter se*."[344] As a general proposition it is historically accurate that the primary focus of the 1954 Inter-State Conference, which led to six agreements, was on the concerted defence of the "exclusive sovereignty and jurisdiction" that each State had claimed over its maritime zone and on the seaward extent of those claims. It does not follow, however, that in 1954 Chile, Ecuador and Peru did not address their lateral boundaries at all. The opposite is true: they did so in express terms, in three instances of the texts adopted at the 1954 Conference.

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342 Letter No. 8-10-B-C/0169-2000 of 14 April 2000 from the Consul General of Peru in Arica to the Harbour Master of Arica, **Annex 91 to the Counter-Memorial**.

343 Report of the Foreign Affairs Committee of the Congress of Peru on the Agreements and Treaties signed by Peru, Chile and Ecuador in Santiago, on 18 August 1952 and in Lima, 4 December 1954, **Annex 6 to the Reply**, with a translation of this portion produced as **Annex 78** to this Rejoinder.

344 Reply, para. 4.5.

2.114. First, as noted[345], the Agreement Relating to a Special Maritime Frontier Zone was concerned *only* with the lateral maritime boundaries between Chile, Ecuador and Peru. It had no other function.

2.115. Secondly, on the same day that Chile, Ecuador and Peru signed the Agreement Relating to a Special Maritime Frontier Zone, they adopted an instrument concerning its interpretation, called the "Clarification [*Aclaración*] on Provisions of the Agreements"[346]. Article 31(2)(a) of the Vienna Convention requires that this *aclaración* be taken into account in the interpretation of the Agreement Relating to a Special Maritime Frontier Zone, as "an agreement. . . made between all the parties in connexion with the conclusion of the treaty". Yet Peru has not a word to say about it in its Reply. The *aclaración* provides that "accidental presence" within the meaning of Article 2 of the Agreement Relating to a Special Maritime Frontier Zone was to be "determined exclusively by the authorities of the country whose maritime jurisdictional boundary would have been transgressed"[347]. The unambiguous wording acknowledges the existence of "maritime jurisdictional boundaries" between all three States parties.

2.116. Thirdly, the Agreement Relating to Measures of Supervision and Control of the Maritime Zones of the Signatory Countries, also adopted at the 1954 Inter-State Conference, provides in Article 2 that:

> "The supervision and control referred to in article one shall be exercised by each country exclusively in the waters of its jurisdiction. Nevertheless, their ships or aircrafts will be allowed to enter the Maritime Zone of another signatory

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345 See paras 2.101-2.102 above.

346 Final Minutes of the 1954 Inter-State Conference, 4 December 1954, **Annex 40 to the Counter-Memorial**, p. 12, discussed further at para. 2.210 of Chile's Counter-Memorial.

347 *Ibid*.

> country with no need for special authorization when their cooperation is expressly requested."[348]

This article proceeded on the footing that each State's maritime zone had been delimited, and that, absent a request for cooperation by a neighbouring State, neither ships nor aircraft of one State party could enter the "Maritime Zone of another signatory country"[349].

2.117. Peru notes in its Reply that: "The 1954 Agreement on a Special Zone had nothing to do with the seabed or subsoil, or with navigation or any other use of the water column apart from fishing."[350] That is factually true but legally irrelevant to the express confirmation of a "maritime boundary" in Article 1 of the agreement. The zones of tolerance created by the agreement related only to "small vessels manned by crews with insufficient knowledge of navigation or not equipped with the necessary instruments"[351]. The creation of zones of tolerance for the benefit of such vessels on either side of the "parallel which constitutes a maritime boundary"[352] does not in any way reduce the acknowledgement in Article 1 of that agreement that such a maritime boundary was one delimiting the full sovereignty and jurisdiction that had already been claimed and delimited in the Santiago Declaration two years earlier.

2.118. Furthermore, Article 1 of the Agreement Relating to Measures of Supervision and Control of the Maritime Zones of the Signatory Countries referred to each State party's supervision and control of "the exploitation of the resources in its maritime zone", without limitation to fisheries or any other

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348 Agreement Relating to Measures of Supervision and Control in the Maritime Zones of the Signatory Countries, **Annex 4 to the Counter-Memorial**, Art. 2.

349 See Counter-Memorial, para. 3.129.

350 Reply, para. 4.9.

351 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, Art. 2 and preambular recitals.

352 *Ibid*., Art. 1.

individual category of resource[353]. As with the other instruments adopted at the 1954 Inter-State Conference, this agreement, too, was deemed to be an "integral. . .part" of the Santiago Declaration of 1952,[354] which had set forth the States parties' "exclusive sovereignty and jurisdiction"[355] over the "sea"[356], "seabed"[357] and "subsoil"[358].

2.119. What is more, Articles 2 and 3 of the Agreement Relating to Measures of Supervision and Control of the Maritime Zones of the Signatory Countries governed the passage of aircraft over the lateral maritime boundaries between the States parties, indicating that the parties considered their maritime boundaries to apply to the airspace above their maritime zones, as well as to the sea, seabed, and subsoil. The 1954 Minutes record that it was a Peruvian delegate who specifically suggested the inclusion of aircraft in Article 3 of the Agreement Relating to Measures of Supervision and Control of the Maritime Zones of the Signatory Countries[359].

*5. The 1954 Agreement Relating to a Special Maritime Frontier Zone and the 1952 Santiago Declaration are to be Read Together*

2.120. The Agreement Relating to a Special Maritime Frontier Zone is expressed "to be an integral and supplementary part of" the Santiago

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353 Agreement Relating to Measures of Supervision and Control of the Maritime Zones of the Signatory Countries, **Annex 4 to the Counter-Memorial**, Art. 1.

354 See Agreement Relating to Measures of Supervision and Control of the Maritime Zones of the Signatory Countries, **Annex 35 to the Reply**, Art. 7.

355 See Santiago Declaration, **Annex 47 to the Memorial**, Arts II and III.

356 *Ibid*., Art. II.

357 *Ibid*., Art. III.

358 *Ibid*., Art. III.

359 Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, p. 2.

Declaration[360]. The two treaties are to be read together, and the second constitutes an authentic interpretation of the first. The States parties' use of this technique is not surprising given that all of them had civil-law traditions, in which a later instrument (such as a law or agreement) can supplement or authentically interpret an earlier instrument, such that the two must be read together.

2.121. Peru acknowledges that "[a]ll the instruments adopted in 1954" were "an integral part of the agreements and resolutions adopted in 1952."[361] The significance of this point is that the following statements in the Agreement Relating to a Special Maritime Frontier Zone[362] are all to be regarded as an "integral part" of the Santiago Declaration:

*(a)* the reference to the "maritime frontier" in the title;

*(b)* the reference to "inadvertent violations of the maritime frontier between adjacent States" in the first recital;

*(c)* the reference to "the parallel which constitutes the maritime boundary between the two countries" in Article 1; and

*(d)* the reference to "violation" of one State's waters by a vessel of "either of the adjacent countries" in Article 2.

The Santiago Declaration must be read together with all of these statements. They demonstrate that in 1952 and 1954, Chile, Ecuador and Peru all agreed that

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360 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, Art. 4. Chile discussed this at paragraphs 2.206 and 4.5-4.7 of the Counter-Memorial.

361 Memorial, para. 4.88.

362 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**.

each pair of adjacent States had a "maritime boundary" between them, constituted by a parallel of latitude.

2.122. Peru remained silent in its Reply about the fact that in the Agreement Relating to a Special Maritime Frontier Zone the three States deemed all of the provisions of that agreement "to be an integral and supplementary part of" the Santiago Declaration[363]. There is no dispute that the Agreement Relating to a Special Maritime Frontier Zone is a treaty and was a treaty from its inception[364]. That Agreement, to use the language that Peru used to describe the 1954 Complementary Convention, "follows in all formal respects what is to be expected in a treaty"[365]. Peru argues that the Santiago Declaration was not and has never become a treaty. Peru has not explained how the provisions of a treaty (the Agreement Relating to a Special Maritime Frontier Zone) could have been deemed to have been an integral and supplementary part of a text that Peru now says was not a treaty (the Santiago Declaration).

*6. The Statement by Mr. Cristóbal Rosas*

2.123. With its Reply Peru filed a statement made in September 2010 by Mr. Cristóbal Rosas, a private entrepreneur in the Peruvian whaling industry who attended the 1952 and 1954 conferences on the invitation of the Peruvian Government. The statement discusses events that took place more than half a century ago. The Court has made clear that it "will treat with caution evidentiary materials specially prepared for [a] case" and "will prefer contemporaneous evidence"[366]. There are official minutes for the meetings about which Mr. Rosas now testifies. They were signed by all three States parties for the express purpose

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363 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, Art. 4.

364 Cf. Reply, para. 3.154.

365 *Ibid*.

366 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 201, para. 61.

of memorializing their joint intent[367]. Those contemporaneous trilateral official documents are plainly to be preferred to what one Peruvian businessman says more than 55 years later in a document created expressly for the purpose of litigation, and after the first round of written pleadings had already been submitted to the Court.

2.124. Mr. Rosas says that "as an eyewitness of the discussions, I can assure that in the 1952 Conference of Santiago the issue of establishing boundaries between the maritime zones of the countries was not addressed."[368]

2.125. Mr. Rosas is not recorded as having been a member of the Peruvian delegation at the First Session of the Legal Affairs Commission of the 1952 Conference, at which the Santiago Declaration was prepared. As noted above[369], the minutes of that session record the agreement of all of the delegates that the Santiago Declaration was to–

> "be drawn on the basis that the boundary line of the jurisdictional zone of each country be the respective parallel from the point at which the borders of the countries touches or reaches the sea."[370]

2.126. Mr. Rosas is recorded as having attended the First and Second Sessions of Commission I at the 1954 Conference. The Complementary Convention and the Agreement Relating to a Special Maritime Frontier Zone were adopted at these sessions. The evidence of Mr. Rosas concerning the 1954 Conference is narrow. He says only that "the establishment of maritime boundaries" was not "included as an agenda topic" and that the Peruvian delegation did not "have any authorisation to negotiate or sign" boundary

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367 See paras 2.53-2.56 and 2.87-2.98 above.

368 Appendix A to the Reply, 7th section.

369 See para. 2.53 above.

370 Minutes of the First Session of the Legal Affairs Commission of the 1952 Conference, 11 August 1952 at 4.00 p.m., **Annex 56 to the Memorial**, p. 2.

agreements[371]. As expressly confirmed at the First and Second Sessions of the 1954 Inter-State Conference, at which Mr. Rosas was present, the lateral maritime boundaries had already been settled in 1952[372]. This confirmation is discussed in detail at paragraphs 2.87-2.98 above. Mr. Rosas fails to make any mention of these confirmations. Since the maritime boundaries had already been settled in 1952, there would have been no reason for the delegates to have authorization to sign a boundary agreement. In short, the evidence of Mr. Rosas is irrelevant for three reasons. First, there are official contemporaneous records about the matters to which he now testifies. Second, he was not present at the Session of the 1952 Conference at which the delimitation aspect of the Santiago Declaration was discussed. Third, although he was present at the sessions of the 1954 Conference at which the existing maritime boundaries were expressly confirmed, he fails to make any mention of those confirmations, which are recorded in the official contemporaneous Minutes.

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2.127. In conclusion, the "parallel which constitutes a maritime boundary" in Article 1 of the Agreement Relating to a Special Maritime Frontier Zone is the reference line on either side of which a 10M zone of tolerance was established. It applied between Peru and Ecuador, and between Peru and Chile. In this way, as in the *Libya/Chad* case, "the existence of a determined frontier was accepted and acted upon"[373]. It cannot now be cast aside.

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371 Appendix A to the Reply, 8th section.

372 See paras 2.87-2.88 above.

373 *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 35, para. 66.

## Section 4. The Parties' Agreement in 1968-1969 to Signal their Maritime Boundary

2.128. In 1968 and 1969, Chile and Peru agreed to implement physically ("*materializar*") their agreed maritime boundary. They agreed to align two lighthouses on the parallel of latitude of Hito No. 1 for this purpose[374]. In completing the signalling work, the Parties were implementing their maritime-delimitation agreement found in the Santiago Declaration, which is to be read together with the Agreement Relating to a Special Maritime Frontier Zone[375].

2.129. Peru has attempted to deny that the two alignment lighthouses were to indicate a maritime boundary which was already in place and served all purposes. To that end, Peru raises three arguments: first, the lighthouses were constructed "to show near-shore fishermen where the land boundary between Peru and Chile lay and whose coasts they were alongside"[376]; second, they were "to signal the whereabouts of the line used for fisheries policing"[377]; and third, the line could not be an all-purpose maritime boundary because it does not cross *Punto Concordia*, as unilaterally declared by Peru in 2005 and alleged by it to be the point of intersection of the land-boundary line and the low-water line[378].

2.130. This Section demonstrates that the first two of these arguments are not supported by the contemporaneous records, in particular the 1968 Minutes and the 1969 Act. What the contemporaneous records show is that the Parties considered that a maritime boundary already existed and that they were agreeing to erect the lighthouses to signal that pre-existing maritime boundary.

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374 See Counter-Memorial, paras 3.19 *et seq*. for detail.

375 *Ibid*., paras 3.39-3.41.

376 Reply, para. 4.28.

377 *Ibid*., para. 4.29

378 *Ibid*., paras 2.79 and 4.80-4.82.

2.131. The third argument, regarding the identification of a reference point for the boundary parallel of latitude, is addressed in Section 5 (paragraphs 2.155 *et seq*.).

## A. THE LIGHTHOUSES WERE TO SIGNAL THE MARITIME BOUNDARY, NOT THE LAND BOUNDARY

2.132. Peru's argument on the 1968 signalling work relies on a statement written for these proceedings in September 2010 by Ambassador Pérez de Cuéllar, who in 1968 was the Secretary-General of the Ministry of Foreign Affairs of Peru. He says that "the only purpose" of the lighthouses was for fishermen of both countries to "see from the sea the land boundary"[379]. This is illogical on a number of counts. It is impossible for a pair of lighthouses, aligned east-west on a parallel of latitude, to indicate the course of the land-boundary line in the coastal area, where the land-boundary line follows an arc in a north-east to south-west direction. In addition to being illogical, Mr. Pérez de Cuéllar's assertion is also inconsistent with the contemporaneous official documentation, notably the relevant agreements between the Parties.

2.133. Mr. Pérez de Cuéllar fails to refer to Peru's diplomatic note to Chile of 5 August 1968, which he signed for the Foreign Minister. In it, Peru expressed its unreserved approval of the 1968 Minutes, in which Chilean and Peruvian delegates who had met in April 1968 proposed, in the terms of the Peruvian note signed by Mr. Pérez Cuéllar, the "installation of leading marks to materialise *the parallel of the maritime frontier.*"[380] The Chilean and Peruvian delegations, each headed by senior Foreign Ministry officials in charge of boundaries, and accompanied by serving and retired Navy officers, memorialized the following in the 1968 Minutes:

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379 Statement of Mr. Javier Pérez de Cuéllar, 30 September 2010, **Appendix B to the Reply**, third paragraph.

380 Note No. (J) 6-4/43 of 5 August 1968 from the Secretary-General of the Ministry of Foreign Affairs of Peru (signing for the Foreign Minister) to the Chilean chargé d'affaires in Peru, **Annex 74 to the Memorial**, first paragraph (emphasis added).

*(a)* They were entrusted by their respective Governments with undertaking 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)*."[381]

*(b)* They agreed to submit to their respective Governments a proposal for "the installation of leading marks" to be placed "in the direction of the parallel of the maritime frontier"[382].

*(c)* The parallel of the maritime frontier to which the lighthouses were to give physical effect passed through Hito No. 1; and the coordinates of Hito No. 1 had been confirmed in the 1930 Final Act signed by the 1929-1930 Mixed Boundary Commission[383].

2.134. Peru's note to Chile on 5 August 1968 confirmed Peru's acceptance of these points "in their entirety"[384]. Later that month, Chile accepted the joint proposal made in the 1968 Minutes[385]. By this exchange of diplomatic notes, the Parties agreed without any reservation or qualification that they would signal the parallel of the "maritime frontier originating at [Hito No. 1]"[386].

2.135. The two States subsequently agreed to create a mixed commission (the ***1968-1969 Mixed Commission***) to verify the location of Hito No. 1 and finalize the technical specifications of the two lighthouses that would "signal the

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381 1968 Minutes, **Annex 59 to the Memorial**, first preambular paragraph (emphasis added).

382 *Ibid*., first preambular paragraph and first operative paragraph.

383 *Ibid*., penultimate paragraph.

384 Note No. (J) 6-4/43 of 5 August 1968 from the Secretary-General of the Ministry of Foreign Affairs of Peru (signing for the Foreign Minister) to the Chilean chargé d'affaires in Peru, **Annex 74 to the Memorial**, first paragraph.

385 Note No. 242 of 29 August 1968 from the Embassy of Chile in Peru to the Ministry of Foreign Affairs of Peru, **Annex 75 to the Memorial**, second paragraph.

386 1968 Minutes, **Annex 59 to the Memorial**, first preambular paragraph.

maritime boundary"[387]. This bilateral agreement was reflected in Peru's diplomatic note to Chile of 13 August 1969, in which Peru announced its delegation to the 1968-1969 Mixed Commission and expressly confirmed that the lighthouses were to be erected in order to "signal the maritime boundary [*señalar el límite marítimo*]"[388].

2.136. In its Reply, Peru simply ignores the numerous references to "the maritime frontier" in this series of instruments. Peru chooses to rely on a statement by Mr. Pérez de Cuéllar, created for these proceedings, which is contradicted by the contemporaneous record[389].

2.137. Peru also invokes one internal document of its Foreign Ministry, dated 24 January 1968[390], which preceded, and in any event is inconsistent with, the bilateral record. Peru describes this document as containing a "thorough account of the circumstances which led to the erection of the light towers"[391]. This was a report by the head of the Boundaries Department of Peru's Foreign Ministry, Mr. Velando Ugarteche, concerning a meeting earlier that month with his Chilean counterpart, Mr. Forch. Mr. Velando Ugarteche wrote that the Chilean and Peruvian officials agreed to place next to Hito No. 1 a high leading mark, visible several miles from the coast[392]. Peru apparently considers that this is

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387 See, e.g., the preamble to the 1969 Act and the first paragraph of the Joint Report attaching the 1969 Act, **Annex 6 to the Counter-Memorial**.

388 Note No. 5-4-M/76 of 13 August 1969 from the Peruvian Embassy in Chile to the Chilean Ministry of Foreign Affairs of Chile, **Annex 78 to the Counter-Memorial**.

389 On the evidential value of witness statements created for the purposes of litigation, as compared with contemporaneous official documents, see para. 2.123 above and the authority cited there in footnote 366.

390 See Memorandum No. (J)-11 of 24 January 1968 from the Head of Borders Department to the Secretary-General of the Ministry of Foreign Affairs of Peru, **Annex 10 to the Reply**, second paragraph.

391 Reply, para. 4.28.

392 Memorandum No. (J)-11 of 24 January 1968 from the Head of Borders Department to the Secretary-General of the Ministry of Foreign Affairs of Peru, **Annex 10 to the Reply**, second paragraph.

evidence that the Parties wished to signal their land boundary, not their maritime boundary. But its internal note of 24 January 1968 does not say this.

2.138. The salient point arising from the initial Forch–Velando Ugarteche meeting in January 1968, and a subsequent exchange of diplomatic notes in February and March of that year, is the Parties' agreement that the point "at which the common border reaches the sea" needed to be made visible from the sea[393]. The Parties intended to signal for mariners the parallel "at the point at which the land frontier of the States concerned reaches the sea" as set out in Article IV of the Santiago Declaration[394].

2.139. An internal note of April 1968 by the International Boundaries Division of the Ministry of Foreign Affairs of Chile records that at the Forch–Velando Ugarteche meeting in January 1968 the Parties agreed to convene a meeting at Hito No. 1 to study the signalling of the maritime frontier[395]. That is entirely consistent with the bilateral instruments that followed, namely the Minutes of April 1968, the exchange of notes of August 1968 and the 1969 Act.

2.140. Mr. Velando Ugarteche, the author of the Peruvian internal document of January 1968 on which Peru relies[396], later led the Peruvian delegation to the bilateral meeting in Arica in April 1968 to study how to "materialize" the parallel of the maritime frontier. The Chilean delegation was led again by his Chilean counterpart, Mr. Forch. The delegates of the Parties prepared there a joint proposal, memorialized in the 1968 Minutes, to construct two leading

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393 Note No. (J) 6-4/9 of 6 February 1968 from the Minister of Foreign Affairs of Peru to the Chilean chargé d'affaires in Peru, **Annex 71 to the Memorial**, first paragraph; Note No. 81 of 8 March 1968 issued by the Chilean chargé d'affaires in Peru to the acting Minister of Foreign Affairs of Peru, **Annex 72 to the Memorial**, first paragraph. Also see Counter-Memorial, paras 3.22-3.23.

394 See Counter-Memorial, paras 3.39-3.41.

395 Memorandum No. 14 of 22 April 1968 by the International Boundaries Division of the Ministry of Foreign Affairs of Chile, **Annex 49**, p. 2.

396 Reply, para. 4.28.

marks to signal the "parallel of maritime frontier"[397]. Mr. Velando Ugarteche signed the 1968 Minutes together with all the other delegates. This proposal was agreed to by both Parties in an exchange of diplomatic notes in August 1968[398]. As noted at paragraphs 2.133-2.134 above, those bilateral instruments referred to the Parties' agreement to signal the "maritime frontier".

2.141. Peru's argument that the lighthouses were to signal the land boundary is unsustainable. Indeed, Peru's own Memorial acknowledges elsewhere that the two lighthouses were to signal a line at sea[399].

2.142. That the lighthouses were to signal a line at sea, rather than the land boundary, is also borne out in publications of the Peruvian and Chilean Navies. The 1971 edition of Peru's *List of Lighthouses*, issued by Peru's Ministry of the Navy, describes the *Concordia* lighthouse placed adjacent to Hito No. 1 as an "alignment light [*Luz de enfilación*]"[400]. The 1976 edition of the same *List* is even more specific. It states that the lighthouse was an alignment light illuminating the direction of 270°, i.e., due west along 18° 20' 47" S (the latitude of Hito No. 1 when referred to PSAD56 Datum)[401]. Similarly, the sixth edition of the *Sailing Directions* issued by the Hydrographic Institute of the Chilean Navy (the first revision after the coming into operation of the lighthouses) states that the "maritime boundary is the parallel of Boundary Marker No. 1", and indicates that Chile's "Alignment Concordia Lighthouse" is located at 90° from Hito No. 1

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397 1968 Minutes, **Annex 59 to the Memorial**.

398 Note No. (J) 6-4/43 of 5 August 1968 from the Secretary-General of the Ministry of Foreign Affairs of Peru (signing for the Foreign Minister) to the Chilean chargé d'affaires in Peru, **Annex 74 to the Memorial**; Note No. 242 of 29 August 1968 from the Embassy of Chile in Peru to the Ministry of Foreign Affairs of Peru, **Annex 75 to the Memorial**.

399 See, e.g., Memorial, para. 4.127 and Reply, para. 4.29.

400 Ministry of Navy of Peru, *Lista de Faros 1971 — Costa del Perú*, 1971, p. 25, **Annex 85**.

401 Directorate of Hydrography and Navigation of the Navy of Peru, *Lista de Faros y Señales Náuticas — Costa del Perú*, 5th edn, 1976, **Annex 88**, p. 54.

(i.e., due east from Hito No. 1, on the parallel of latitude of that *hito*)[402]. The Peruvian and Chilean press also reported in 1969 that the two States were to build alignment marks to signal the course of the maritime boundary to fishermen[403].

2.143. There is evidence that third States also understood the Parties to be signalling their maritime boundary. The Argentine Ambassador to Peru followed the process, and his report to Buenos Aires in June 1969 says that: "Experts from Peru and Chile will meet. . .to decide the form in which the maritime frontier between these countries will be demarcated."[404] He added that the "demarcation shall take the form of alignments and will physically give effect to [*materializará*] the parallel of hito number one"[405]. (At the time, Argentina and Uruguay were negotiating a maritime-boundary agreement, and it is understood that Argentina had proposed a boundary line following a parallel of latitude[406].)

2.144. To conclude: Peru argues that the 1968-1969 signalling exercise should be evaluated on the basis of the "express words used"[407] in the instruments underlying it. Chile agrees with that test. Peru's case is that the lighthouses were constructed to signal the land boundary. That argument

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402 Hydrographic Institute of the Chilean Navy, *Derrotero de la Costa de Chile*, *Vol. 1: From Arica to Chacao Canal*, 6th edn, 1980, **Annex 133 to the Counter-Memorial**, Chap. I, p. 1.

403 From the Peruvian press see, e.g., "Frontera Marítima Perú y Chile Demarcarán [Peru and Chile will demarcate the Maritime Frontier]", *El Expreso*, 27 June 1969, **Annex 139**; "Torres y Señalización en la Frontera Marítima: Tacna-Arica [Towers and Signalling at the Maritime Frontier: Tacna-Arica]", *La Voz de Tacna*, 1 July 1969, **Annex 140**.

404 Memorandum entitled "Demarcation [of the] Chile-Peru Maritime Frontier" of 30 June 1969 from the Ambassador of Argentina to Peru to the Ministry of Foreign Affairs and Worship of Argentina, **Annex 23**, first paragraph.

405 *Ibid*., fourth paragraph.

406 E. Jiménez de Arechaga, "South American Maritime Boundaries", in J. I. Charney and L. M. Alexander (eds), *International Maritime Boundaries, Vol. I*, 1993, p. 285, **Annex 279 to the Counter-Memorial**, p. 286.

407 Reply, para. 4.28.

receives no support in the contemporaneous documents. Chile's case is that the Parties agreed to build the lighthouses "to materialise the parallel of the maritime frontier"[408]. The contemporaneous bilateral record is replete with those "express words".

### B. The Lighthouses were to Signal the Maritime Boundary, not an *ad hoc* Fisheries Policing Line

2.145. The repeated reference to a *límite marítimo* or a *frontera marítima* in the 1968 Minutes, the Parties' exchange of notes in August 1968 approving the joint proposal in those Minutes, and the 1969 Act are all clear evidence of the Parties' shared understanding that the parallel so "materialised"[409] was a definitive, all-purpose maritime boundary. Peru now asserts that the line to be "materialised" was a fisheries policing line. Nowhere does Peru even attempt to explain how this newly-proffered and unsupported assertion could possibly be consistent with the unqualified and repeated use of the terms *límite marítimo* (maritime boundary) and *frontera marítima* (maritime frontier) in the documents in which the Parties memorialized their bilateral commitments. It is simply not credible that in 1968 and 1969 representatives of Chile and Peru, including the senior official in each State responsible for boundary matters and Mr. Pérez de Cuéllar, called the parallel of latitude passing through Hito No. 1 the "maritime boundary" and the "maritime frontier" but did not really mean it; yet Peru's case asks the Court to accept that hypothesis. Nor is there any evidence at all that the Parties discussed, let alone agreed, an *ad hoc* or temporary line for fisheries purposes only. The totality of the evidence points to the Parties' implementing an existing all-purpose maritime boundary which is described in the contemporaneous official papers as "maritime boundary" and "maritime frontier" without any reservation.

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408 1968 Minutes, **Annex 59 to the Memorial**, first preambular paragraph.

409 *Ibid*.

2.146. Peru's argument that the boundary line agreed to be "materialised" was a fisheries line[410] proceeds from the premise that the signalling lighthouses were primarily to serve artisanal fishermen. The premise is correct but the conclusion does not follow[411]. The bulk of the maritime traffic in the vicinity of the maritime boundary is fishing vessels. The primary maritime resource in the area is fisheries. By building the lighthouses the Parties were addressing the traffic that was most considerable and which had led to transgressions of the boundary and so provoked involvement by the Navies of the two States[412].

2.147. That is the context of Chile's diplomatic note of August 1968 which says that lighthouses would "act as a warning to fishing vessels that normally navigate in the maritime frontier zone"[413]. The significance of the 1968-1969 signalling process to this case is that in the bilateral instruments concerning it, the Parties acknowledged their maritime boundary and, in response to repeated violations of that boundary by fishing vessels, agreed to construct two lighthouses to signal the parallel of the maritime boundary primarily for the benefit of those vessels[414]. As noted, Peru did not suggest otherwise at the time. If Peru's present position had been its position in 1968 and 1969, it would have been incumbent on Peru to accompany its references to the "maritime boundary"

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410 See Reply, para. 4.28.

411 See Counter-Memorial, para. 3.32.

412 *Ibid*., paras 3.12-3.18 and Rejoinder, paras 3.51-3.55.

413 Note No. 242 of 29 August 1968 from the Embassy of Chile in Peru to the Ministry of Foreign Affairs of Peru, **Annex 75 to the Memorial**, quoted in the Reply, para. 4.28.

414 In an aide-mémoire handed to the Peruvian chargé d'affaires in January 2002, Chile stated that the two lighthouses performed a signalling function to "help the mariners and fishermen": see Aide-Mémoire of 25 January 2002 from the Ministry of Foreign Affairs of Chile to the Peruvian chargé d'affaires in Chile, **Annex 100 to the Counter-Memorial**. Peru refers to this document and claims on the basis of it that Chile maintained the view that the line was relevant only to fishing vessels (see Reply, para. 4.28). First, the document refers to *mariners* in general, as well as fishermen. Second, the categories of people for whose benefit the lighthouses were constructed does not detract from the all-purpose nature of the boundary that was being signalled.

with a reservation to the effect that actually this "maritime boundary" was merely a provisional fisheries-policing line which could later be varied.

2.148. In its Reply, Peru raises certain new arguments to claim that the parallel of Hito No. 1 cannot be the maritime boundary. First, Peru says that the whole process of the agreed construction of the lighthouses was too "informal" to concern an all-purpose maritime boundary[415]. However Peru now views the matter, the objective contemporaneous documentation is clear. The Parties were not establishing a maritime boundary in 1968 and 1969. They were implementing an existing boundary, which in document after document they described as such, in unqualified terms. The bilateral instruments the Parties used were perfectly adequate to record a binding agreement between them to signal their maritime boundary. The process was initiated by an exchange of notes between Chile and Peru[416] and the proposal for erecting a pair of alignment lighthouses on the parallel of Hito No. 1, made in the 1968 Minutes, was also accepted and agreed in its entirety by both States through a further exchange of diplomatic notes[417]. Senior foreign ministry officials responsible for boundary issues were instructed by their respective Governments to conduct an "on-site study"[418] and finalize the technical specifications of the alignment lighthouses, and the Peruvian officials were appointed to perform this task by means of a Supreme Resolution. There are no requirements of form that must be met for conduct to constitute confirmation of an existing maritime boundary, but the

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415 Reply, para. 4.28.

416 Note No. (J) 6-4/9 of 6 February 1968 from the Minister of Foreign Affairs of Peru to the Chilean chargé d'affaires in Peru, **Annex 71 to the Memorial**; Note No. 81 of 8 March 1968 from the Chilean chargé d'affaires in Peru to the acting Minister of Foreign Affairs of Peru, **Annex 72 to the Memorial**; see Counter-Memorial paras 3.22-3.23.

417 Note No. (J) 6-4/43 of 5 August 1968 from the Secretary-General of the Ministry of Foreign Affairs of Peru (signing for the Foreign Minister) to the Chilean chargé d'affaires in Peru, **Annex 74 to the Memorial**; Note No. 242 of 29 August 1968 from the Embassy of Chile in Peru to the Ministry of Foreign Affairs of Peru, **Annex 75 to the Memorial**; see Counter-Memorial, para. 3.27.

418 1968 Minutes, **Annex 59 to the Memorial**, first preambular paragraph.

1968-1969 process was in any case a formal series of transactions and joint acts by the Parties.

2.149. Second, Peru says that the "technical procedures employed" by the two States indicate no intention of delimiting a precise maritime boundary line[419]. Section 5 of this Chapter describes in more detail how the Parties' representatives inspected the area around Hito No. 1, both on land and from the sea, in April 1968. Here, suffice it to say that this was not a delimitation exercise because the maritime boundary between Chile and Peru had already been delimited by the Santiago Declaration and confirmed in the Agreement Relating to a Special Maritime Frontier Zone[420]. Rather, as is recorded in the 1968 Minutes and the 1969 Act, the intention was physically to give effect to the maritime boundary which already existed. This the Parties did by confirming the precise latitude of the parallel of their boundary and then physically signalling it. They agreed to do so by reference to an existing demarcated point, Hito No. 1, the last demarcated *hito* on the "seashore"[421]. No complex technical exercise was needed.

2.150. Third, Peru argues that Chile's northernmost basepoint declared in 2000[422] is not on the parallel of Hito No. 1, which allegedly indicates that Chile does not consider the parallel of Hito No. 1 to be the maritime boundary[423]. In the list of Chile's basepoints on which Peru relies, the latitude of the

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419 Reply, para. 4.28.

420 See paras 2.41-2.98 and 2.99-2.122 above.

421 1930 Final Act, **Annex 54 to the Memorial**, table with the description of the boundary markers.

422 United Nations, Communication M.Z.N.37.2000.LOS (Maritime Zone Notification) from the Secretary-General of the United Nations, entitled "Deposit by Chile of charts showing normal and straight baselines, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf", 29 September 2000, **Annex 132**.

423 See Reply, para. 4.84 and **Figure R-4.3 to the Reply**, Vol. III, p. 51.

northernmost point is recorded to be 18° 21' 00" S[424] when referred to WGS84 Datum. The list of Chile's basepoints also clearly states (but Peru omits to mention) that the northernmost basepoint has been defined to be on the same latitude as "18° 21' 03" S when referred to Local Datum, obtained on the basis of astronomic measurement carried out by the Chile-Peru Demarcation Commission in 1930"[425]. The astronomical latitude of 18° 21' 03" S is that of Hito No. 1 as recorded in the 1930 Final Act[426]. It is also equivalent to that of the geographic parallel which the Parties jointly referred to as the maritime-boundary line in 1968-1969[427]. Plainly, Chile's northernmost basepoint has been defined to be on the parallel of latitude passing through Hito No. 1.

2.151. Peru seeks to argue otherwise in reliance on its **Figure R-4.3**[428]. In order to construct **Figure R-4.3**, Peru took the latitude of Chile's northernmost basepoint from the list of basepoints[429] printed on the back of Chile's Chart No. 6 of 2000, and then plotted it on an image selected by Peru from "Google Earth". Peru's figure purports to depict Chile's northernmost basepoint slightly north of the parallel of latitude of Hito No. 1. There is no scale provided on the imagery created by Peru for these proceedings, so the magnitude of the alleged discrepancy cannot be validated.

2.152. What seems certain is that Peru has not taken account of the fact that the latitudes and longitudes provided in the list of Chile's basepoints are stated to

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424 Geographic Positions of Points of the Normal Baselines from which the National Maritime Jurisdictions have been Drawn, on the reverse of SHOA Chart No. 6, *Rada de Arica a Caleta Matanza*, 1st edn, 2000, **Annex 70**.

425 *Ibid*., the first legend.

426 1930 Final Act, **Annex 54 to the Memorial**, table with the description of the boundary markers.

427 See the 1968 Minutes, **Annex 59 to the Memorial**, and the 1969 Act, **Annex 6 to the Counter-Memorial**.

428 Reply, Vol. III, p. 51.

429 Peru produced this list at **Annex 110 of the Memorial**.

be approximate[430]. Rather, Peru appears to proceed on the basis that the latitude of Chile's northernmost basepoint is precisely 18° 21' 00.00" S, rather than having been rounded to 18° 21' 00" S.

2.153. Chile's northernmost basepoint was determined by identifying the intersection of the parallel of latitude of Hito No. 1 and the low-water line on Chile's Chart 1101[431]. Since this was the largest-scale chart officially published by Chile (1998 edition, at scale 1:25,000), Chile's approach was in conformity with Article 5 of UNCLOS[432]. Because of the inherent difficulties with identifying the coordinates of any point on a chart with precision[433], it is reasonable and usual to round coordinates derived in this way to the nearest second for publication purposes[434]. Alleging discrepancies based on a comparison of coordinates plotted on a chart, and declared to be approximate, with the location of a point having the same coordinates on satellite imagery is easy to do. But it is irrelevant to this case and to Chile's obvious intention to nominate a northernmost basepoint having the same latitude as Hito No. 1.

2.154. Peru now also claims that the parallel of latitude of Hito No. 1 could not have served as the maritime boundary because Chile's northernmost basepoint does not correspond to the precise point of intersection of the low-

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430 Geographic Positions of Points of the Normal Baselines from which the National Maritime Jurisdictions have been Drawn, on the reverse of SHOA Chart No. 6, *Rada de Arica a Caleta Matanza*, 1st edn, 2000, **Annex 70**.

431 *Ibid*., see description of the northernmost basepoint.

432 Article 5 of UNCLOS: "Except where otherwise provided in the Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State."

433 A distance of 0.2 mm (a reasonable resolution for a plotted point) on a chart at a scale of 1:25,000 is a distance of 5m on the ground. At 18 degrees of latitude, that distance equates to approximately two-tenths of a second of latitude.

434 The coordinates of Peru's Point 266 are also rounded to the nearest second: see Law No. 28621 of 3 November 2005: Baselines Law of the Maritime Dominion of Peru, **Annex 23 to the Memorial**.

water line with the land-boundary line. The next Section addresses this argument.

## Section 5. Hito No. 1 as the Agreed Reference Point for the Maritime Boundary Parallel

### A. Introduction: Peru's Attempts to Unsettle the Maritime Boundary

2.155. Peru devotes 66 pages at the beginning of its Reply to a discussion of the role of Hito No. 1 as a marker on the Chile-Peru land boundary. Peru seeks to create a dispute about the land boundary by observing that Hito No. 1 is not located on the physical low-water line. Peru says that the land-boundary line intersects the present-day low-water line southwest of Hito No. 1, at a point which Peru has unilaterally identified as *Punto Concordia* under Article 2 of the 1929 Treaty of Lima[435]. Peru also says that this point is the southernmost basepoint of Peru (Point 266)[436] and has latitude of 18° 21' 08" S when referred to WGS84 Datum[437].

2.156. Peru's arguments about the land-boundary terminus have no inherent significance and are directed solely to Peru's attempt to unsettle the maritime boundary. *Punto Concordia* (Point 266) was declared by Peru as late as 2005. It was declared, not within the framework jointly established by the Parties to address issues related to the land boundary (see paragraph 2.162 below), but within the context of unilaterally defining its basepoints, baselines and the outer limit of its "maritime dominion"[438]. Peru claims that *Punto Concordia* is on the low-water line, although it is not on the low-water line when depicted on Peru's

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435 Reply, paras 2.79 and 4.80-4.82.

436 *Ibid*., para. 2.50.

437 Law No. 28621 of 3 November 2005: Baselines Law of the Maritime Dominion of Peru, **Annex 23 to the Memorial**, Annex 1.

438 *Ibid*., Arts 2 and 3 and Annex 1.

large-scale chart of the area required by international law[439]. Peru attempts to justify the claim on the basis of diagrams employing "Google Earth" imagery specifically prepared for these proceedings. On the basis of this unilaterally and recently declared point, Point 266, Peru now argues that "the Parties could not have agreed a maritime boundary along the parallel of latitude passing through *Hito No. 1*"[440] and, consequently, that a new maritime-boundary line must be determined with Peru's *Punto Concordia* as its starting point.

2.157. Arguments about the relative advantages and disadvantages of Hito No. 1 and *Punto Concordia* cannot undo the Parties' long-standing agreement that their maritime boundary is "the parallel at the point at which the land frontier of the States concerned reaches the sea"[441]. As discussed in the previous Section, the Parties have also agreed that Hito No. 1 was the reference point for the parallel constituting their maritime boundary. This further bilateral agreement cannot be undone by Peru's new unilateral declarations about *Punto Concordia*/Point 266.

### B. Chile and Peru Consensually Determined Hito No. 1 as the Reference Point with Full Knowledge of its Location

2.158. When the agreement on maritime delimitation was set forth in the Santiago Declaration of 1952, the three States parties did not, in that instrument, specify the coordinates for the point where the land frontier "reaches the sea" as between each two States parties. This was the case for the Chile-Peru boundary as for the Peru-Ecuador boundary. The Santiago Declaration is a tripartite agreement on the three States' entitlement to maritime zones and the outward and lateral limits of these zones, but the point where the land frontier reaches the sea was for each pair of adjacent States parties to confirm between them. When

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439 See Article 5 of UNCLOS, quoted at footnote 432 above. Also see Counter-Memorial, para. 3.47 and **Figure 24 to the Counter-Memorial**, Vol. I, after p. 200.

440 Reply, para. 2.88 (emphasis in the original).

441 Santiago Declaration, **Annex 47 to the Memorial**, Art. IV.

observance and identification of the parallel of the maritime boundary by mariners gave rise to practical difficulties between Chile and Peru, the two States agreed to signal the parallel of their maritime boundary with two lighthouses[442] aligned on the parallel of latitude passing through Hito No. 1.

2.159. As expressly recorded in the 1968 Minutes, when the Chilean and Peruvian delegations met at the Chile-Peru frontier in April 1968, they inspected the area around Hito No. 1 both on land and from the sea[443]. An internal report by Mr. Forch, the head of the Chilean delegation, confirms that on 25 April 1968, the two delegations[444] sailed from the nearest port, Arica, observed Hito No. 1 from the sea and aligned their position with Hito No. 1 and the control tower of Arica's Chacalluta Airport (a visible landmark close to the parallel of Hito No. 1) in order to observe an approximate course of the parallel of Hito No. 1[445]. On the following day, the delegations inspected the land around Hito No. 1[446]. The delegates were thus well aware of Hito No. 1's location on the seashore and its limited visibility from out at sea.

2.160. Neither delegation suggested that the reference point for the parallel of the maritime boundary should have been by the water. The delegations had already received clear instructions from their respective Governments on the use of Hito No. 1 in connection with the maritime-boundary line. As explicitly recorded in the 1968 Minutes, the delegates were instructed to propose technical means of signalling the "parallel of the maritime frontier originating at Boundary

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442 See Counter-Memorial, paras 3.5-3.38; Rejoinder, paras 2.128 *et seq*.

443 1968 Minutes, **Annex 59 to the Memorial**, second preambular paragraph.

444 The Peruvian delegation consisted of the head of the Frontier Department of the Ministry of Foreign Affairs, the Sub-Director of Hydrography and Lights of the Ministry of Navy and a specialist (retired Navy officer) on hydrography. The Chilean delegation consisted of the head of the International Boundaries Division of the Ministry of Foreign Affairs and a maritime advisor (retired Navy officer).

445 Report No. 16 on the meeting at the Chile-Peru frontier, by Alejandro Forch, Chief of the International Boundaries Division, May 1968, **Annex 50**, Section C, para. 3.

446 *Ibid*., Section C, para. 5.

Marker number one (No. 1)"[447]. They were not tasked to identify or vary the maritime-boundary line, but merely to implement it; and to implement it by signalling the Hito No. 1 parallel. These instructions were consistent with internal advice given in Chile in 1964 that the maritime boundary between the Parties follows the parallel of latitude of Hito No. 1[448].

2.161. Peru is correct that the mandate of the delegations in 1968-1969 did not involve revisiting or revising the Parties' agreement on their land boundary, reached in 1929-1930[449]. The Parties simply determined that the reference point for the parallel of their maritime boundary was Hito No. 1, namely the most seaward point of the land boundary for which the Parties had agreed and memorialized coordinates[450]. For that reason, they also agreed to rebuild Hito No. 1 "at the place where it was initially erected in 1930"[451]. Until Peru began preparing for this case, no one had raised the slightest objection to this practical arrangement.

2.162. For completeness, Chile notes that Peru did not contest the continued use of Hito No. 1 in 1987, when Chile and Peru agreed to establish another mixed commission concerned with the land boundary. One of the tasks of this mixed commission was to "[p]ropose the erection of intermediary boundary markers in the areas where this is deemed necessary"[452]. The Parties agreed to establish this mixed commission 14 months after the Bákula Memorandum of 1986, in which Peru proposed a renegotiation of the existing maritime boundary

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447 1968 Minutes, **Annex 59 to the Memorial**, first preambular paragraph.

448 Note No. 25 of 9 April 1964 from the General President of the Boundary Commission of Chile to the Minister of Foreign Affairs of Chile, **Annex 46**, third and fourth paragraphs.

449 See Reply, para. 2.86.

450 Act of Plenipotentiaries, **Annex 55 to the Memorial**.

451 1969 Act, **Annex 6 to the Counter-Memorial**, section F.1.

452 Agreement between the Governments of the Republics of Chile and Peru of 19 October 1987, reproduced in Decree No. 776 of 23 September 1988, **Annex 8**, see para. 1.4 of the General Provisions and Work Plan.

(see paragraphs 3.106-3.119 below). Neither at the time of the Bákula Memorandum, nor in connection with the 1987 mixed commission, did Peru suggest that the Parties should conduct a technical exercise to determine consensually what Peru has now unilaterally identified as *Punto Concordia*. When yet another mixed commission on the land boundary was created by the two States in 1997[453], there was a further opportunity for Peru to raise the concerns it now voices so stridently; yet it did not.

## C. HITO NO. 1 WAS AGREED TO BE THE POINT WHERE THE "LAND FRONTIER REACHES THE SEA" UNDER THE SANTIAGO DECLARATION

2.163. Chile and Peru delimited their land boundary in full in Article 2 of the 1929 Treaty of Lima[454]. In Article 3 of that Treaty the Parties agreed that a Mixed Commission was to determine and mark the agreed boundary using a series of *hitos*[455]. In its 1930 Final Act the 1929-1930 Mixed Commission recorded the precise locations (with agreed coordinates) of the 80 *hitos* that it had placed on the ground to demarcate the land boundary[456]. The Final Act records that the "demarcated boundary line starts from the Pacific Ocean at a point on the seashore [*orilla del mar*] ten kilometres northwest from the first bridge over the River Lluta"[457]. The list of *hitos* in the 1930 Final Act commences with Hito No. 1. It is described as having been placed on the "seashore [*orilla del mar*]"[458].

2.164. The Parties concluded a further instrument concerning the determination and marking of their land boundary: the Act of Plenipotentiaries of

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453 Agreement between Peru and Chile on the Conservation of Markers on the Common Boundary, signed on 6 March 1997, **Annex 38 to the Reply**.

454 Treaty of Lima, **Annex 45 to the Memorial**, Art. 2.

455 *Ibid*., Art. 3.

456 1930 Final Act, **Annex 54 to the Memorial**.

457 *Ibid*., second paragraph.

458 Paragraphs 2.9-2.16 of the Counter-Memorial recount in more detail the process through which Chile and Peru fully delimited and marked their land boundary.

August 1930[459]. This document was signed by the plenipotentiaries of the two States, pursuant to Article 4 of the Treaty of Lima, under which "the position and distinguishing characteristics of the boundary markers" were to be set out in a "deed of transfer"[460]. In the Act of Plenipotentiaries, the same list of *hitos* that had been memorialized in the 1930 Final Act was reproduced. The Act of Plenipotentiaries acknowledged that those *hitos* demarcated the land boundary "beginning in order from the Pacific Ocean"[461]. Hito No. 1 was by agreement of the Parties placed on the "seashore [*orilla del mar*]", at a point where it would be safe from waves during high tides and storms[462]. The local knowledge of the impact of frequent heavy swell and tsunamis, as well as the loose-surface geomorphology of the area near the water line[463], meant that Hito No. 1 had to be built at a location ensuring that it would be a lasting monument.

2.165. It is clear that the small distance between Hito No. 1 and the low-water line was of no practical significance to the Parties. Hence they agreed to memorialize the coordinates of Hito No. 1 (but no other point closer to the sea) and confirmed that Hito No. 1 was located on the seashore, "*orilla del mar*"[464], and that the demarcation had commenced "from the Pacific Ocean"[465].

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459 Act of Plenipotentiaries, **Annex 55 to the Memorial**.

460 Chile and Peru signed a deed of transfer on 28 August 1929 (**Annex 45 to the Reply**) which did not include the position or characteristics of boundary markers. The last operative paragraph of that deed provided that another act was to be signed by Chile and Peru which would set out such position and characteristics "pursuant to Article 4 of the [Treaty of Lima]". That "other act" was the Act of Plenipotentiaries.

461 Act of Plenipotentiaries, **Annex 55 to the Memorial**, introductory paragraph.

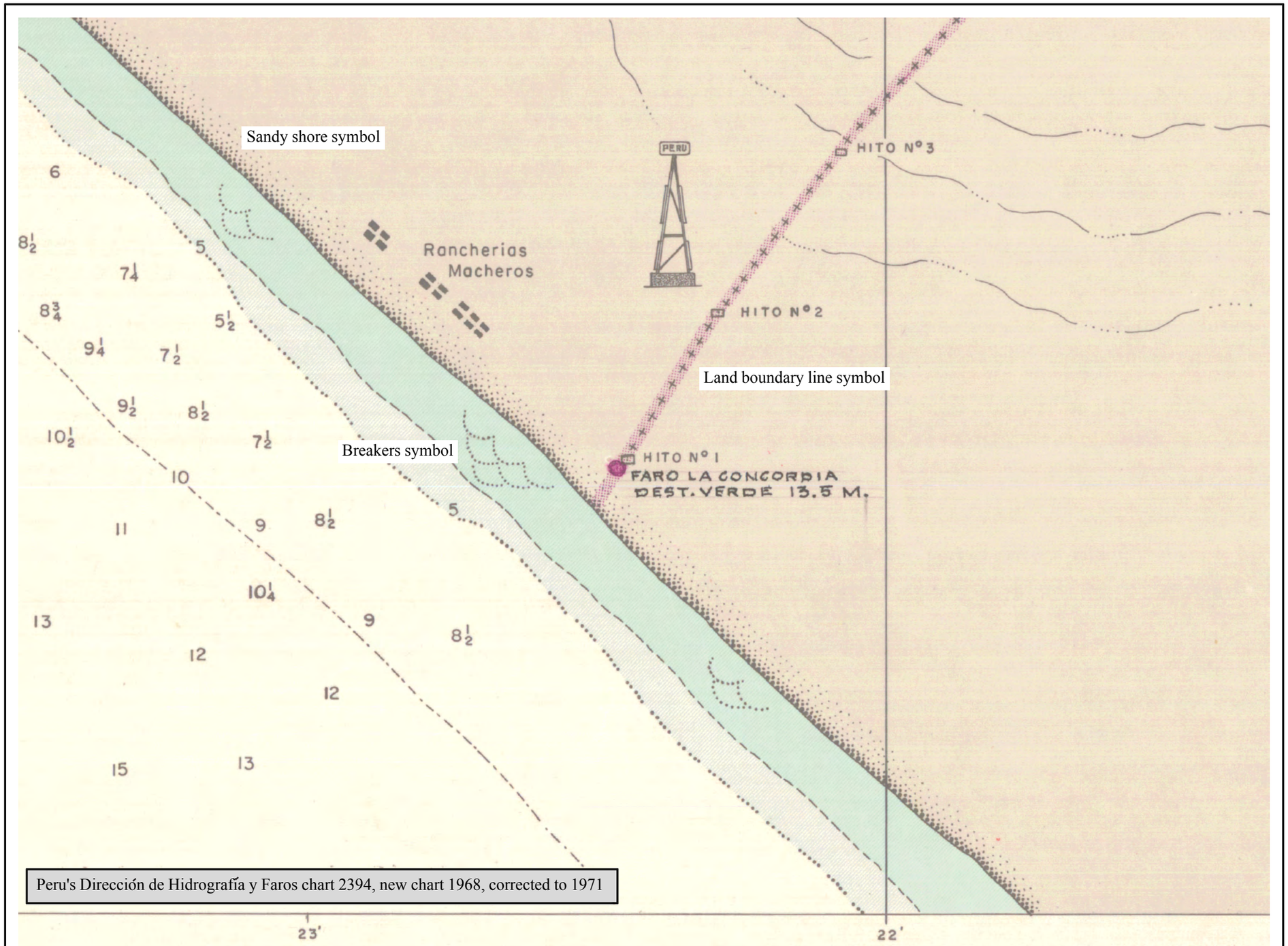
462 See the Instructions to the Chilean Delegate with the prior approval of the Ministries of Foreign Affairs of Chile and Peru of 24 April 1930, **Annex 87 to the Memorial**.

463 Chart 2394 issued by the Directorate of Hydrography and Lights of Peru in 1971 (reproduced at **Figure 67**) shows near-shore loose sand and a breakers symbol in the area around Hito No. 1.

464 1930 Final Act, **Annex 54 to the Memorial**, second paragraph.

465 Act of Plenipotentiaries, **Annex 55 to the Memorial**, introductory paragraph.

Peru's chart 2394 (new chart 1968) showing swell and loose surface on the seashore




Peru's Dirección de Hidrografía y Faros chart 2394, new chart 1968, corrected to 1971

*Prepared for the Ministry of Foreign Affairs, Chile, by UKHO Law of the Sea Consultancy*

2.166. In 1968 Chile and Peru shared a common understanding that the legal basis of the maritime boundary was to be found in the Santiago Declaration, as complemented by the Agreement Relating to a Special Maritime Frontier Zone. Both Chile and Peru had invoked these agreements in the requests that each State made to the other to take measures to prevent illegal crossings of the maritime boundary[466]. As was noted in the Counter-Memorial[467] (and is accepted by Peru)[468], such transgressions prompted the signalling agreements of 1968-1969. This continuum of practice and agreements demonstrates that when in 1968 and 1969 the Parties agreed to signal their maritime boundary, they were implementing a maritime boundary that had already been delimited by agreement.

2.167. Both Parties operated on the basis that Hito No. 1 was to be used as the reference point for "the parallel at the point at which the land frontier of the States concerned reaches the sea"[469]. The records of meetings between their delegations in 1968 and 1969 do not indicate that any line other than the Hito No. 1 parallel had been considered as a possible alternative. As noted, in a report prepared in 1964, the Boundary Commission of the Ministry of Foreign Affairs of Chile had already taken the view that the operative parallel of the maritime boundary was the latitude of Hito No. 1[470].

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466 See Memorandum No. 5-4-M/64 of 20 December 1962 from the Peruvian Embassy in Chile to the Ministry of Foreign Affairs of Chile, **Annex 73 to the Counter-Memorial**; and Memorandum of 6 October 1965 by the Ministry of Foreign Affairs of Chile (addressed to the Peruvian Ambassador to Chile), **Annex 68 to the Memorial**.

467 Counter-Memorial, paras 3.19-3.20.

468 See Reply, paras 4.28-4.29.

469 Santiago Declaration, **Annex 47 to the Memorial**, Art. IV.

470 Note No. 25 of 9 April 1964 from the General President of the Boundary Commission of Chile to the Minister of Foreign Affairs of Chile, **Annex 46**, third and fourth paragraphs. This Note was issued to confirm the accuracy of the depiction of the maritime boundary on a chart by the Governor of the Department of Arica in 1964. (The chart could not be located in the archives.)

2.168. At the time of the 1968-1969 signalling agreements, and in fact until as late as 2008, Peru's position was that the land boundary ended at Hito No. 1 and, consequently, the southernmost point of Peru's land territory was marked by that *hito*. This position was explicitly confirmed by Mr. Wagner de Reyna, a former Director of Frontier and Geographic Studies of the Foreign Ministry of Peru, in his 1961 monograph on the boundaries of Peru. He stated that the land boundary "ends on the seashore of the Pacific Ocean at a boundary marker (Concordia) which is located at 18° 21' 03" S., which is the southernmost point of Peru."[471] Peru continued to hold this position long thereafter, as evidenced, for example, in an Atlas published by the Office of the President in 1970[472] and a series of maps depicting the boundaries of Peru with its neighbouring States, published by the Ministry of Foreign Affairs in 1988[473]. This last publication was cited in 1990 by Dr. Agüero Colunga of Peru for the proposition that the southernmost point of Peru's coastline ended at Hito No. 1[474]. Other Peruvian official bodies also acknowledged Hito No. 1 as the southernmost point of Peruvian territory[475], and Peruvian publicists expressed the same position[476].

2.169. In 2001 Peru was still content to treat Hito No. 1 as the seaward terminus of the land boundary. In Peru's Law on Territorial Demarcation of the Province of Tacna, of 2001, Peru identified Hito No. 1 as the southernmost point

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471 A. Wagner de Reyna, *Los Límites del Perú*, 1961, **Annex 186**, p. 15.

472 See Geographic Advisor's Office of the National Institute of Planning in the Office of the President, *Atlas Histórico Geográfico de Paisajes Peruanos*, 1963-1970, **Annex 169 to the Counter-Memorial**, p. 22.

473 Ministry of Foreign Affairs of Peru, *El Perú en Gráficos*, published in *El Comercio*, 16 October 1988, **Annex 91**.

474 M. F. Agüero Colunga, *Delimitación Marítima del Perú con Ecuador y con Chile*, 1990, **Annex 156**, p. 76.

475 Ministry of Energy and Mines of Peru, *Anuario Estadístico de Hidrocarburos — Hydrocarbons Statistical Yearbook 2000*, 2000, **Annex 190 to the Counter-Memorial**, p. 13; National Institute of Statistics and Information of Peru, *Environmental Statistics 2000* (*Estadísticas del Medio Ambiente 2000*), **Annex 186 to the Counter-Memorial**.

476 See Counter-Memorial, para. 2.17 and footnote 145 (Professors Novak and García-Corrochano), and para. 2.37 and footnote 174 (Professor Vergaray Lara).

of its southernmost province[477]. One of the maps serving as the express basis on which the southern boundary of the province of Tacna was demarcated[478] (see **Figure 68**) indicated that the Chile-Peru land boundary terminates at Hito No. 1. An amendment to the 2001 Law in 2008[479], published in Peru's Official Journal the day after Peru's application to the Court, purported to change Peru's position from the one that it had previously accepted to that which it now advocates before the Court. This was simply an attempt by Peru to improve its position in this litigation, and serves only to do the opposite.

2.170. Since they first established the position of Hito No. 1 in 1930, both Parties have been aware that there is a narrow strip of seashore between Hito No. 1 and the changing sea levels. Neither Party considered it to be of any importance, until Peru seized on it as part of its litigation strategy.

2.171. In Chapter II, Section IV of the Reply (paragraphs 2.58 *et seq*.), Peru attempts to show that Chile's own practice was such that the land boundary continued seawards of Hito No. 1, following an arc. In so doing Peru refers to (a) Chile's cartographic materials; (b) the construction and removal of a surveillance booth by Chile in the Chile-Peru frontier area in 2001; and (c) a Chilean bill of 2005-2006 which was intended to create a new administrative region in the Chile-Peru frontier area. These are all matters concerning the role of Hito No. 1 in connection with the land boundary and therefore, for the reasons explained in Subsection F below, outside the Court's jurisdiction. Nonetheless, the following brief observations are in order for the sake of completeness.

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477 Law No. 27415 of 25 January 2001: Territorial Demarcation of the Province of Tacna, **Annex 191 to the Counter-Memorial**, Art. 3; also see Counter-Memorial, para. 2.17.

478 Map No. 2834 (37-v) J631 2nd edn, 1995, published by the National Geographic Institute of Peru, referred to in Law No. 27415 of 25 January 2001: Territorial Demarcation of the Province of Tacna, Department of Tacna, **Annex 97**, first transitional and final provision.

479 Law No. 29189 of 17 January 2008: Law specifying Article 3 of Law No. 27415, **Annex 16 to the Reply**, Sole Article.

2.172. Starting with cartographic materials, Peru relies on ten Chilean maps, produced as **Figures R-2.10** to **R-2.19**[480]. Most of these seem to have been relied upon by Peru in the present proceedings because they include the word "Concordia" in the vicinity of the point where the land boundary reaches the sea. That is indeed the language of Article 2 of the Treaty of Lima of 1929. None of these maps identifies a precise point for the intersection of the land boundary and the low-water line, let alone a point matching the one that Peru now unilaterally postulates in these proceedings (Point 266). Only one of the ten Chilean maps produced by Peru is of a scale and clarity sufficient to show clearly the line of the land boundary continuing seaward of Hito No. 1 along an arc. This is at **Figure R-2.14**[481]. Although emphasizing this depiction, Peru does not mention that the map states: "The drawing of the boundary is approximate and not official [*El trazado del límite es aproximado y no oficial*]"[482].

2.173. Peru argues that Chile's decision in 2001 to remove a surveillance booth placed by Chile to the north of the geodetic arc from the bridge over the River Lluta, between Hito No. 1 and the sea, constitutes acknowledgement by Chile that the land-boundary line continues from Hito No. 1 towards the Pacific Ocean in a south-westerly direction[483]. In fact, Chile decided to remove that booth so as to comply fully with the proposals of the Armies of Chile and Peru that there be no surveillance patrol within 100 metres of the international land boundary, and Chile duly reserved its position regarding the course of the land boundary[484].

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480 Reply, Vol. III, pp. 21-37.

481 *Ibid*., Vol. III, p. 29.

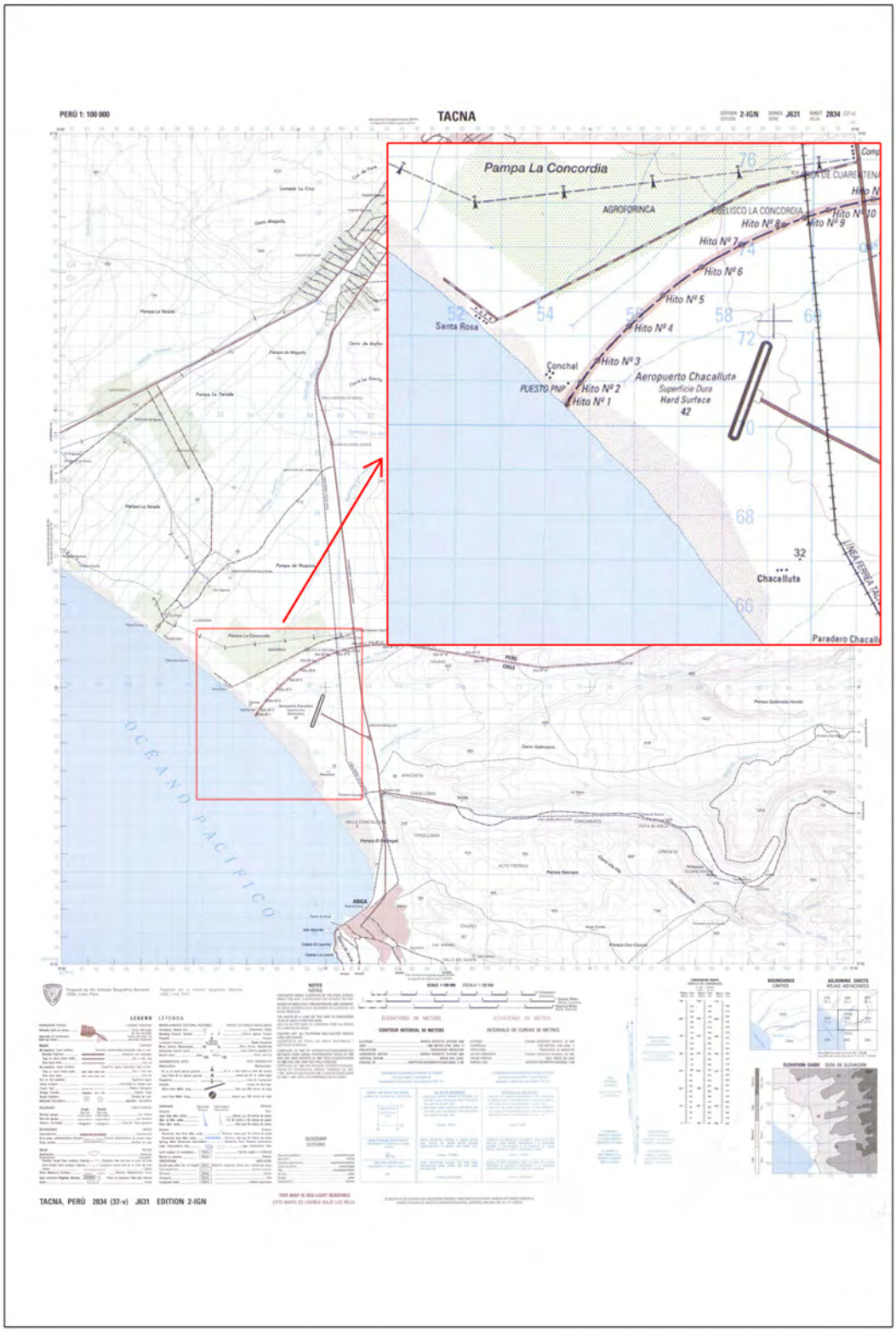
482 See Excerpt from Chile's Nautical Chart 101 of 1989, reproduced at **Figure R-2.14 to the Reply**, Vol. III, p. 29.

483 Reply, paras 2.70-2.71.

484 See Official Declaration of 6 April 2001 by the Ministry of Foreign Affairs of Chile, **Annex 71**; Note No. 1027 of 12 April 2001 from the Minister of Foreign Affairs of Chile to the Minister of Foreign Affairs of Peru (Mr. Pérez de Cuéllar), **Annex 31**.

**Figure 68**

Peruvian Map of Tacna, No. 37-v (1995)




Source: National Geographic Institute of Peru, Map of Tacna No. 37-v, 1:100,000, 1995

2.174. Lastly, on Chile's practice referred to by Peru in connection with the land boundary, an amendment by the Chilean Government to the bill introduced in 2005 for the creation of a new administrative region in the Chile-Peru frontier area[485] indicated that the parallel of latitude of Hito No. 1 constituted part of the boundary of this new administrative region. Peru claims that this amendment to the bill attempted to modify the land-boundary line and suggests that Chile decided not to adopt it because of Peru's protest that the bill was inconsistent with the "final boundary delimitation and demarcation agreed in 1929 and 1930"[486]. That is incorrect. The Constitutional Court considered that the amendment proposed by the Government was significant compared to the text of the original proposal[487]. The Constitutional Court pronounced on an issue of legislative process, rather than the substance of the description of the proposed region's land boundary. This decision and the consequential amendment to the bill have nothing to do with Peru's protest or Chile's understanding of the course of the land boundary. The northern limit of this new region (comprising of the former provinces of Arica and Parinacota)[488] continues to follow in part the

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485 See Message No. 372-353 of 21 October 2005 from the President of Chile to the Chilean Chamber of Deputies beginning the process of approval of Bill creating the XV Region of Arica and Parinacota and the Province of Tamarugal in the Region of Tarapacá, **Annex 28 to the Reply**; Bulletin No. 4048-06 of 13 November 2006 with instructions given during the general discussion on the draft Law creating the XV Region of Arica and Parinacota and the Province of Tamarugal in the Region of Tarapacá, **Annex 29 to the Reply**; and Second Report of 5 December 2006 issued by the Commission for the Government, Decentralization and Regionalization on the Second Constitutional Reading on Bill creating the XV Region of Arica and Parinacota and the Province of Tamarugal in the Region of Tarapacá, **Annex 30 to the Reply**.

486 Note (GAB) No. 6/4 of 24 January 2007 from the Minister of Foreign Affairs of Peru to the Minister of Foreign Affairs of Chile, **Annex 80 to the Reply**, second paragraph. Also see Reply, paras 2.75-2.76.

487 Judgment in Case 719-2007 of 26 January 2007 by the Chilean Constitutional Court regarding the Bill creating the XV Region of Arica and Parinacota and the Province of Tamarugal in the Region of Tarapacá, **Annex 31 to the Reply**, twenty-fifth paragraph.

488 Law No. 20,175 of 23 March 2007: Law Creating the XV Region of Arica and Parinacota and the Province of Tamarugal in the region of Tarapacá, **Annex 32 to the Reply**, Art. 1.

northern limit of the former province of Arica, namely "[t]he boundary with Peru, from the Chilean Sea"[489].

2.175. To summarize, there is no dispute about the coordinates of Hito No. 1, or that these coordinates have been long agreed between the Parties in international agreements, or about the fact that Hito No. 1 is the most seaward demarcated point on the land boundary[490]. What Peru has now sought to place in dispute is the precise course of the land boundary through the scintilla of seashore between Hito No. 1 and the low-water line. As discussed, Peru seeks to raise this issue concerning delimitation of the land boundary as part of its attempt to unsettle the agreed maritime boundary.

2.176. Since Hito No. 1 was, and is, the most seaward demarcated point of the land boundary with coordinates agreed between the Parties, there were good reasons to adopt it as the reference point for the parallel of the maritime boundary. Even if one were to assume for argument's sake that there had been some deviation from the underlying delimitation agreement in the Santiago Declaration, which established the boundary as the parallel where the land frontier "reaches the sea", the consensual choice of Hito No. 1 by the Parties would govern[491].

## D. International Law Permits the Use of Hito No. 1 as the Reference Point for the Chile-Peru Maritime Boundary

2.177. The operative parallel of latitude for the Parties' maritime boundary has been agreed to be the one passing through Hito No. 1. For the purpose of Article IV of the Santiago Declaration the Parties have adopted the parallel of

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489 Decree with Force of Law No. 2-18,175 of 9 June 1989, which Determines the Specific Limits of the Provinces of the Country, **Annex 25 to the Reply**, Art. 1.

490 See Reply, para. 1.18.

491 See *Case Concerning the boundary markers in Taba between Egypt and Israel*, Award, 29 September 1988, *RIAA*, Vol. XX, pp. 56-57, para. 210. Also see Counter-Memorial, p. 200, footnote 583.

latitude of Hito No. 1 as the parallel "at the point at which the land frontier of the States concerned reaches the sea"[492]. For legal and charting purposes, the maritime boundary commences at the low-water line as marked on large-scale charts officially recognized by the coastal State. The Parties' maritime boundary commences where the Hito No. 1 parallel crosses the low-water line, wherever the low-water line may be from year to year.

2.178. Peru now asserts that since Hito No. 1 is not on the physical low-water line, it could not have been used as the reference point for the maritime boundary[493]. It is unclear whether Peru's argument is based on a legal proposition (for which no authority is or could be cited) or rather as a hypothesis about Peru's intent in 1968-1969. On either basis, the argument fails.

2.179. Peru says that the use of Hito No. 1 would have deprived a "stretch of Peru's coast"[494] of a maritime projection, to which Peru would never have agreed. That "stretch of Peru's coast" is 46 metres as best as Chile can calculate using Peru's current large-scale chart[495], or approximately 0.00018% of the total length of the coasts of the continental territories of Chile and Peru[496]. What Peru actually agreed must of course be determined objectively, rather than on the basis of what Peru now says it could not have agreed[497]. And, in fact, Peru's entire argument rests on the premise that a coastline of approximately 46 metres to the south of the parallel passing through Hito No. 1 is Peruvian territory. This proposition need not be tested in these proceedings, because Peru's argument

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492 Santiago Declaration, **Annex 47 to the Memorial**, Art. IV.

493 See, e.g., Reply, paras 2.10, 2.88, 4.82 and 7.4.

494 Reply, para. 4.82.

495 See Peru's chart 3255, reproduced in **Figure 24 to the Counter-Memorial**, Vol. I, after p. 200.

496 Approximately 25,800 km using the internationally recognized world vector shoreline.

497 See *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994*, pp. 121-122, para. 27.

requires it to establish one further proposition — namely, that a maritime boundary cannot as a matter of law be defined by reference to a point on the coast (the "seashore") but only by reference to a point on the low-water line. That proposition is unsound as a matter of law, and no authority is cited for it by Peru. As a matter of fact, on Peru's own case, the parallel of Hito No. 1 *does* serve as the boundary for the Parties' fishing/fisheries zones, i.e., the boundary for the most important economic activity in the area, now and historically. It is difficult to credit the theory that Peru could not have agreed to use as a maritime boundary the very line that Peru itself says it has agreed as a boundary for its most prominent maritime activity.

2.180. Indeed, Peru's proposition fails in light of its own practice in the north. The maritime-boundary line between Peru and Ecuador follows the parallel of latitude 3° 23' 33.96" S (astronomical datum). This latitude corresponds to the most seaward demarcated point (No. 1)[498] of the Ecuador-Peru land boundary at *Boca de Capones*[499]. This first demarcated point of the Ecuador-Peru land boundary is located in the middle of a channel in an area with a dynamic, i.e., shifting, coastline. Neither the land-boundary agreement nor any official chart of Ecuador or Peru specifies this point as being on the line joining the two points on either side of the mouth of the channel that lie on the low-water line. The line across the mouth of a channel moves. By contrast, the demarcated point and hence the parallel of the maritime boundary are stable.

2.181. If the arguments that Peru makes against Chile about Hito No. 1 were accurate, then the first demarcated point of the Ecuador-Peru land boundary

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498 This point is not physically marked, but witnessed by two boundary markers placed on either side of the channel and above the high-water line.

499 See Geographic Advisor's Office of the National Institute of Planning in the Office of the President, *Atlas Histórico Geográfico de Paisajes Peruanos*, 1963-1970, **Annex 84**, p. 602. The latitude of the northernmost basepoint of Peru is also stated to be 3° 23' 33.96" S: Law No. 28621 of 3 November 2005: Baselines Law of the Maritime Dominion of Peru, **Annex 23 to the Memorial**, Art. 2. See further paras 3.152-3.156 of the Counter-Memorial.

could not serve as a reference point for a maritime boundary any more than Hito No. 1 could. Yet both Ecuador and Peru accept that it does[500].

2.182. Peru's proposition that two adjacent States must ensure that the land- and maritime-boundary lines meet at a point on the physical low-water line is not only unsupported by authority, it is inconsistent with the practice of States and decisions of international tribunals[501]. In the remainder of this Subsection, Chile briefly summarizes, as an example, the Award of an UNCLOS Tribunal which delimited the maritime zones of Guyana and Suriname. The Award demonstrates that the course of a maritime boundary may be determined by a point on dry land.

2.183. Chile noted in the Counter-Memorial[502] that the UNCLOS Tribunal in *Guyana v. Suriname* accepted that a fixed point on dry land was chosen by the parties as the reference point for the course of the first segment of the maritime boundary. The Tribunal determined the starting point and course of that segment of the maritime boundary without having to find the course of the land boundary in the vicinity of that reference point. In this respect, the Tribunal's reasoning is particularly pertinent to the present case. In *Guyana v. Suriname* the reference point was not even on the land-boundary line.

2.184. The Tribunal found that an azimuth of ten degrees (N10°E) had been agreed as the territorial sea boundary line between Guyana and Suriname up to a distance of three nautical miles, as is shown on Map 2 of the Award, which is reproduced here as **Figure 69**. This finding was made on the basis of the report

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500 See Note (GAB) No. 6-12-YY/01 of 2 May 2011 from the Minister of Foreign Affairs of Peru to the Minister of Foreign Affairs of Ecuador, **Annex 39**, para. 2; Note No. 9428 GMRECI/CGJ/2011 of 2 May 2011 from the Minister of Foreign Affairs of Ecuador to the Minister of Foreign Affairs of Peru, **Annex 41**, para. 2; and Note (GAB) No. 7-9-C-YY/01 of 2 May 2011 from the Minister of Foreign Affairs of Peru to the Secretary-General of the United Nations, **Annex 40**, para. 2.

501 See Counter-Memorial, para. 3.45 and footnote 579.

502 *Ibid*.

by the United Kingdom-Netherlands Boundary Commission in 1936. As noted by the Tribunal, in 1936 the Boundary Commission agreed that the maritime boundary in the territorial sea should be fixed at an azimuth of N10°E from a specific point on the west bank of the Corentyne River, near to its mouth, which was referred to as "Point 61" or the "1936 Point"[503]. The Boundary Commission buried two markers near Point 61 (Marker A and Marker B) for the purpose of aligning a 10° azimuth passing through Point 61, and two pillars were constructed to identify the alignment with sufficient visibility[504]. On the basis of this arrangement and the subsequent practice of the two States, the Tribunal decided that the first segment of the maritime boundary of the Parties runs from "the intersection of the low water line of the west bank of the Corentyne River and the geodetic line of N10°E which passes through Marker 'B' established in 1936"[505].

2.185. There was no agreed land boundary terminus between Guyana and Suriname. That did not deter the Tribunal from identifying the starting point of the maritime boundary based on the practice of the two States. The Tribunal concluded that its findings had no consequence for the land boundary[506].

## E. Peru Unilaterally Declared Point 266 as part of its Challenge to the Existing Maritime Boundary

2.186. The precise point for "the parallel at the point at which the land frontier of the States concerned reaches the sea" under the Santiago Declaration was to be agreed between the Parties. For sound practical reasons, Hito No. 1

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503 *Guyana v. Suriname*, Award, Permanent Court of Arbitration, 17 September 2007, paras 137-138.

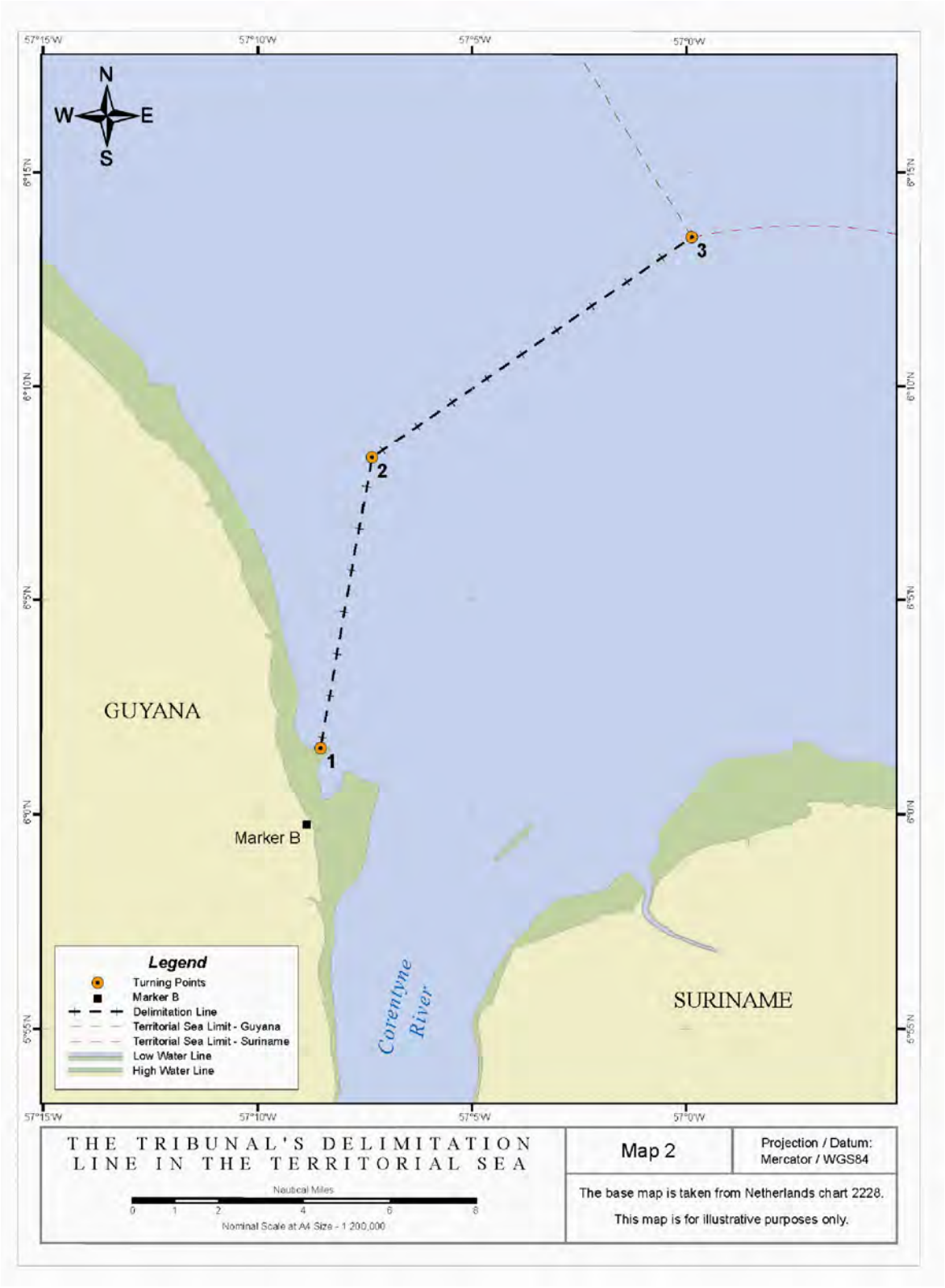
504 Report of 5 July 1936 on the Inauguration of the Mark at the Northern Terminal of the Boundary between Surinam and British Guiana, exhibited as Annex 2 to the Counter-Memorial of Suriname, **Annex 103**, para. 4. The 1936 Point is identical to mark A in this report.

505 *Guyana v. Suriname*, Award, Permanent Court of Arbitration, 17 September 2007, para. 327.

506 *Ibid*., para. 308.

**Figure 69**

Reproduction of Map 2 of the *Guyana v. Suriname* Award (2007) showing the first segment of the maritime boundary between the two States




*Prepared for the Ministry of Foreign Affairs, Chile, by the UKHO Law of the Sea Consultancy*

was in fact so agreed. Thus Peru's criticism that Chile ought to have recognized Peru's Point 266 is misplaced[507]. Point 266 was proposed by Peru, not as the basis for a new agreement implementing the Parties' agreement on a parallel of latitude, but rather as a lever designed as an attempt to destroy that agreement.

2.187. Chile protested Peru's unilateral declaration of Point 266[508]. Chile disputes that point not only because of its unilateral nature but also because of its technical imprecision. First, as depicted on **Figure 70**, Point 266 is not placed on the arc with a radius of ten kilometres from the bridge on the River Lluta, which is how the first segment of the land boundary is constructed[509]. Nor does Point 266 seem to have been identified using the method adopted by the 1930 Mixed Commission, in accordance with the instructions of the Parties (i.e., by constructing a polygon consisting of a series of 1,046.7-metre chords at 174 degrees of angle)[510]. Peru has not produced any documents explaining how Peru measured the seaward continuation of the jointly established course of the boundary arc and/or the frontier polygon, prepared at the time of the measurement of Point 266. Second, Peru now arbitrarily places Point 266 near the surf zone using an image taken from "Google Earth" as deployed for these proceedings[511], without any specification of the status of the tide at the time the photograph was taken, and without presenting any evidence of an accurate modern survey of the relevant coast. Third, Point 266 is 183 metres seaward of the low-water line depicted on Peru's most recent large-scale chart of the area

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507 See Reply, paras 2.51-2.57.

508 E.g., Note No. 17359/05 of 3 November 2005 from the Minister of Foreign Affairs of Chile to the Peruvian Ambassador to Chile, **Annex 107 to the Counter-Memorial**, fourth and fifth paragraphs.

509 See the two identical sets of instructions approved by the Foreign Ministries of Chile and Peru, **Annex 87 to the Memorial**.

510 Instructions 19 and 19A Concerning Boundary Markers at the Arc of Concordia — Moyano–Tirano Sub-Commission — Issued on 22 May 1930 by Peruvian Delegate Federico Basadre and Chilean Delegate Enrique Brieba, **Annex 50 to the Reply**, Third and Fourth paragraphs.

511 See **Figure R-2.9 to the Reply**, Vol. III, p. 19.

(published in 2002), as depicted on **Figure 24** of the Counter-Memorial[512]. In its Reply, Peru remained silent about this obvious difficulty. More generally, the difficulty of precisely identifying the actual low-water line at any given time is further illustrated by a different point identified in 2001 by Dr. Agüero Colunga of Peru as the seaward terminus of the land boundary, with coordinates 18° 21' 07" S and 70° 22' 88" W, stated to be 126 metres away from Hito No. 1[513]. This underscores the need for agreement on a precise point with agreed coordinates. Hito No. 1 is such an agreed point. Point 266 is not.

2.188. Until the 1970s, maritime boundaries were normally determined by graphical means, namely, by constructing the boundary line on a chart and reading off the relevant coordinates, including those of the point on the low-water line, from that chart[514]. On the nautical charts of the Chile-Peru frontier area available in 1952, 1954 and 1968, the distance between Hito No. 1 and the low-water line is barely visible. If the Parties had drawn on any of those charts a parallel line at the point where the Chile-Peru land boundary reached the sea, the margin of error involved could have placed that line anywhere between, or on either side of, the actual physical location of Hito No. 1 and Point 266. As an example, **Figure 71** shows how the maritime-boundary line could be depicted on a Chilean large-scale chart of 1954 (contemporaneous with the 1952-1954 agreements)[515], and where Hito No. 1 and Point 266 could be plotted on that chart. The distance between Hito No. 1 and Point 266 on the chart (10.6 mm on the enlarged extract in **Figure 71**, 0.53 mm at the natural scale of the chart) is negligible.

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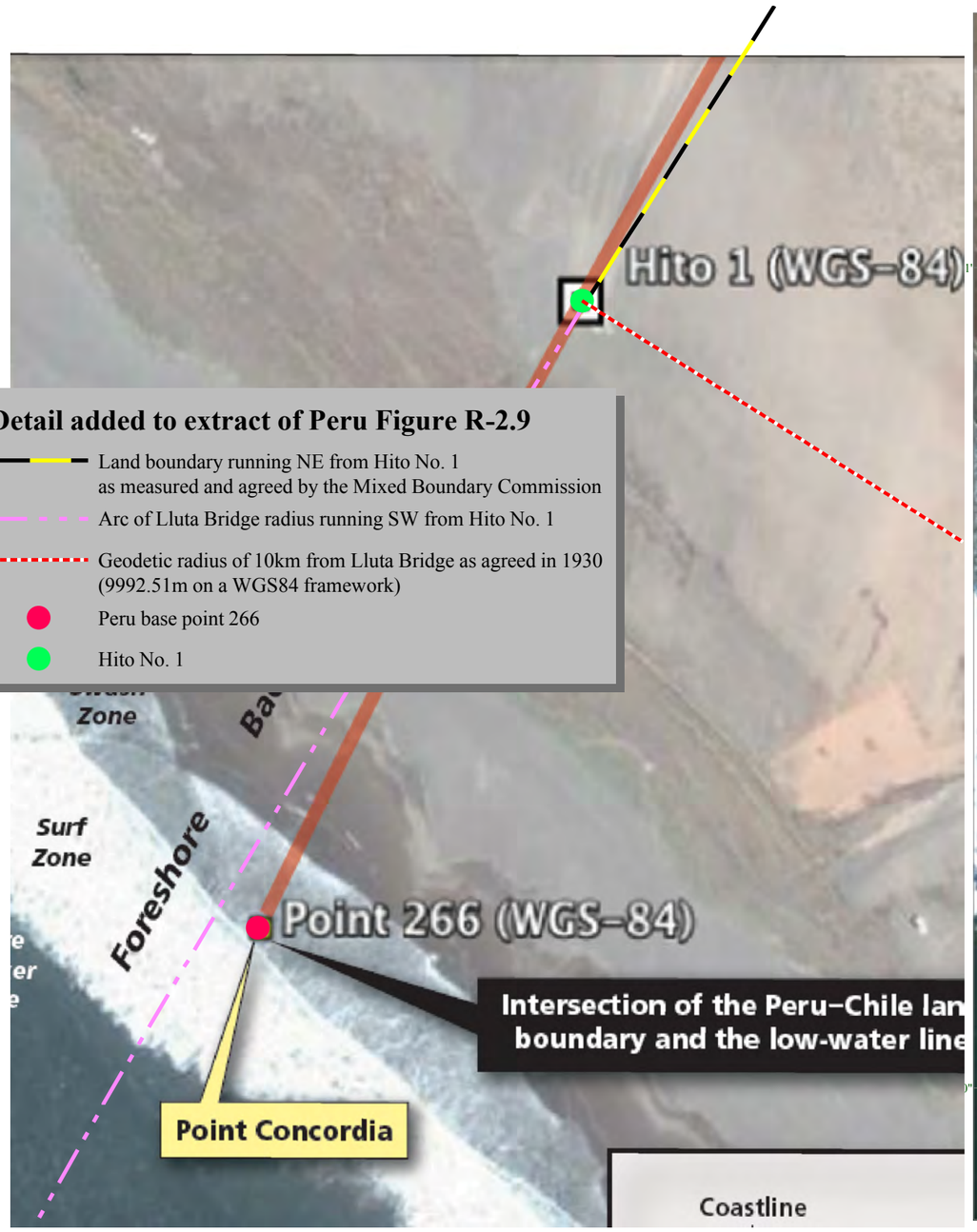
512 Counter-Memorial, Vol. I, after p. 200.

513 M. Agüero Colunga, *Consideraciones para la delimitación marítima del Perú*, 2001, **Annex 157**, p. 317, Diagram No. 21.

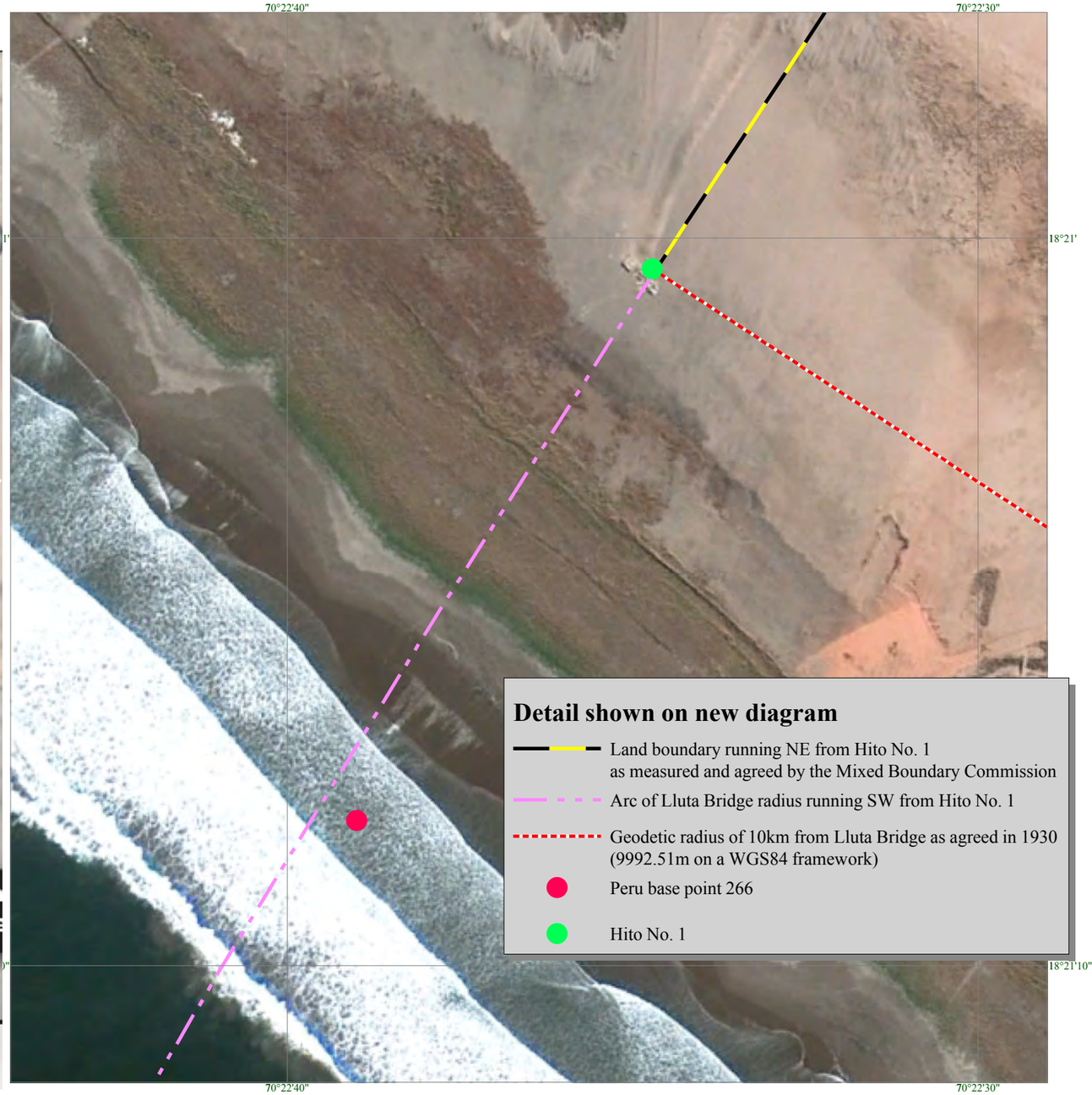
514 P. Beazley, "Technical Considerations in Maritime Delimitations", in J. I. Charney and L. M. Alexander (eds), *International Maritime Boundaries, Vol. I*, 1993, **Annex 165**, p. 250.

515 Chilean Navy Chart, *Chile: Arica-Iquique*, 1:50,000, 1954.

Diagram showing inaccuracies in the illustration at Figure R-2.9 of Peru's Reply




*Extract of Peru's figure R-2.9 fitted to WGS84 using the listed positions of Hito No. 1 and Point 266. Added detail corresponds to that shown in the right-hand side illustration.*

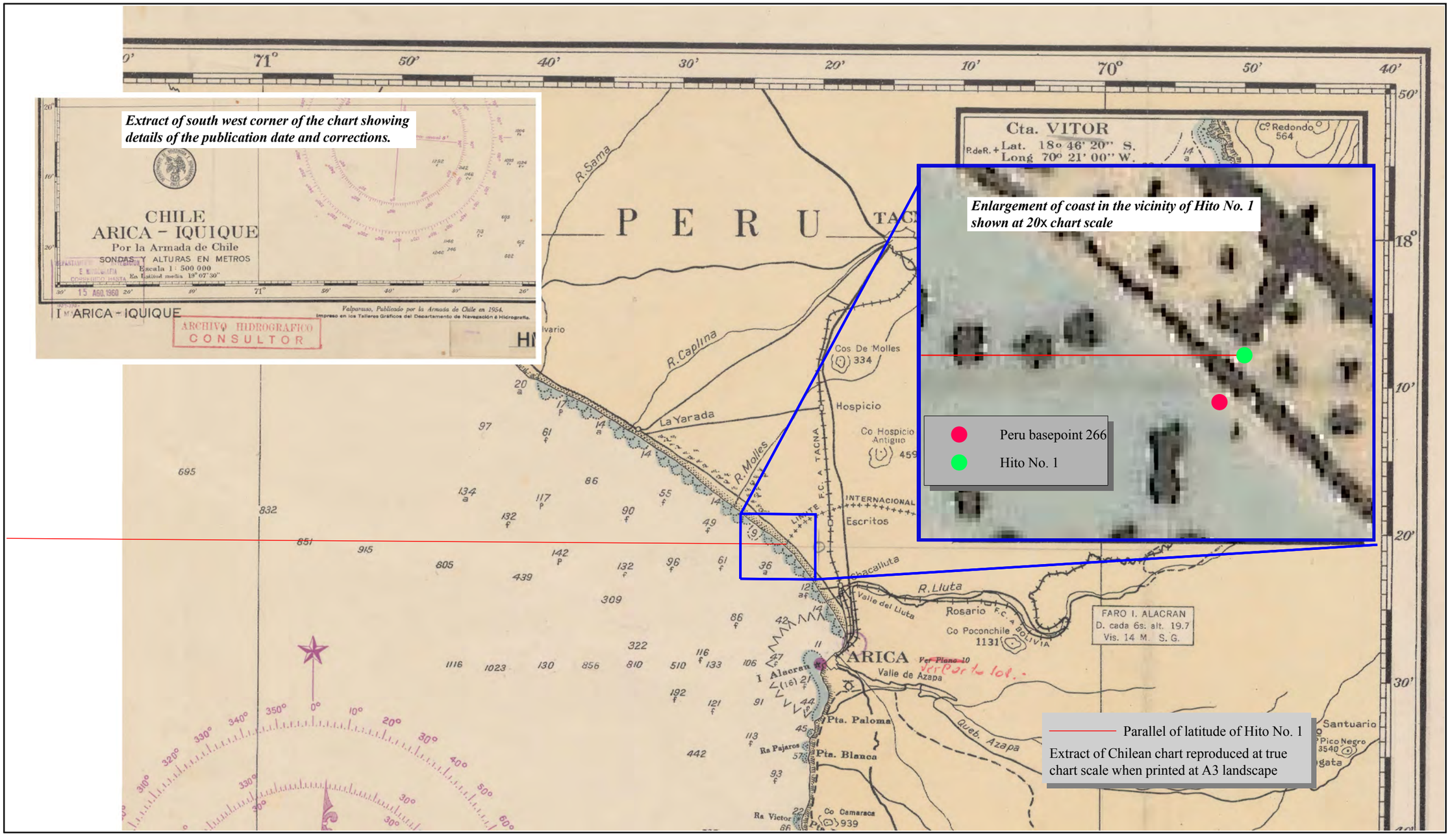



*The backdrop of this illustration is taken from Google Earth imagery dated 13 May 2010. It is reproduced at an approximate scale of 1 : 2,500 when printed at A3 landscape*

*Prepared for the Ministry of Foreign Affairs, Chile by Marine Delimitation Ltd.*

**Figure 71**

Chart I, *Arica - Iquique* published by the Chilean Navy in 1954 at a scale of 1:500,000 superimposed with the parallel of Hito No. 1 and with a 20x enlargement of the coast at the parallel.




*The enlargement of the relevant section of coast shows the relative positions of Hito No. 1 and the Peruvian point 266. The magnified inset shows the points to be 10.6mm apart on paper but at the natural scale of the 1954 chart, the distance between the points is 0.53mm. The distance from Hito No. 1 to the low waterline shown on this 1954 chart is far less, a mere 0.3mm on the chart.*

2.189. In sum, the use of Hito No. 1 as a reference point for the maritime boundary retains today the advantage which led to its having been adopted in the first place. Regardless of changes in the physical low-water line over time, the course of the maritime boundary remains stable.

## F. Absence of Jurisdiction over the Land Boundary

2.190. Peru has invoked the jurisdiction of the Court under Article XXXI of the Pact of Bogotá. On that basis the Court is asked to determine whether a maritime boundary has been agreed under the Santiago Declaration and confirmed in the Agreement Relating to a Special Maritime Frontier Zone and, if so, the course of that maritime boundary. In order to determine the course of the maritime boundary, the Court is required to pronounce on which parallel of latitude corresponds to the "point at which the land frontier of the States concerned reaches the sea" under Article IV of the Santiago Declaration.

2.191. Again, it is undisputed that the final demarcated point of the Parties' land boundary is Hito No. 1. The Parties have agreed that Hito No. 1 has an astronomical latitude of 18° 21' 03" S[516]. Chile's position is that Hito No. 1 is the agreed reference point for the parallel of latitude of the maritime boundary, and that the maritime boundary starts where that parallel of latitude crosses the low-water line, wherever that may be from time to time. The Parties' agreement relating to the role of Hito No. 1 for purposes of Article IV of the Santiago Declaration is an agreement relating to the maritime boundary, not the land boundary. The Court has no need to make any finding concerning the dispute that Peru has sought to create about the course of the land boundary between Hito No. 1 and the low-water line.

2.192. By contrast, Peru's case seeks to create, and then asks the Court to determine, "a dispute between Peru and Chile concerning the co-ordinates of the

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[516] 1930 Final Act, **Annex 54 to the Memorial**.

starting-point of the land boundary"[517]. Yet the Parties' land boundary was fully delimited and demarcated in the 1929 Treaty of Lima[518] and the 1930 Final Act[519].

2.193. Article VI of the Pact of Bogotá excludes from the jurisdiction of the Court–

> "matters already settled by arrangement between the parties. . .or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty"[520].

2.194. The Pact was concluded on 30 April 1948, after the Parties had delimited and demarcated their land boundary pursuant to the 1929 Treaty of Lima and the 1930 Final Act.

2.195. As the Court recently noted,–

> "the clear purpose of this provision was to preclude the possibility of using those procedures, and in particular judicial remedies, in order to reopen such matters as were settled between the parties to the Pact, because they had been the object of an international judicial decision or a treaty."[521]

2.196. It is clear on the face of the text of the 1929-1930 agreements that the matter concerning the delimitation and demarcation of the land boundary is

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517 Reply, para. 1.15.

518 Treaty of Lima, **Annex 45 to the Memorial**, Art. 2.

519 1930 Final Act, **Annex 54 to the Memorial**.

520 Pact of Bogotá, **Annex 46 to the Memorial**, Art. VI.

521 *Territorial and Maritime Dispute (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007*, p. 858, para. 77.

"governed" and "settled" by these agreements. It is therefore beyond the scope of the Court's jurisdiction in the present case.

2.197. Peru makes two arguments in an effort to avoid the clear effect of Article VI of the Pact. First, Peru argues that since none of the instruments from 1929 and 1930 "provide the answer to the question as to what are the precise co-ordinates of Point Concordia"[522] the Court has jurisdiction to settle that question "notwithstanding the final delimitation and demarcation of the land boundary of 1929-1930."[523] If Peru's approach to Article VI of the Pact were correct, issues arising under any treaty from prior to 1948 could be litigated simply by one of its parties framing a question of sufficient specificity so as not to be explicitly answered on the face of the treaty. Delimitation and demarcation of the land boundary are "matters. . .governed by" the 1929 and 1930 agreements, which "settled" these matters. Moreover, the 1929 Treaty of Lima contains its own provision for the settlement of disputes, which is different from the provisions in the Pact of Bogotá. Peru cannot seise the Court of any matter concerning the delimitation or demarcation of the Parties' land boundary.

2.198. Second, Peru attempts to avoid the effect of Article VI of the Pact by arguing that since Article XXXI of the Pact empowers the Court to interpret a treaty, Article VI "does not prevent the Court from applying or interpreting a treaty, whatever the date of its entry into force."[524] This is a fundamentally incorrect approach to the Pact of Bogotá. It is one thing to say that the Court may determine whether the delimitation and demarcation of the land boundary under the 1929-1930 agreements are "matters already settled. . .or. . .governed by agreements or treaties in force" within the meaning of Article VI of the Pact. This is an exercise of the Court's jurisdiction to determine its own jurisdiction, pursuant to Article 36 of the Statute and Article XXXIII of the Pact. It is an

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522 Reply, para. 1.14.

523 *Ibid*., para. 1.15; also see para. 1.14.

524 *Ibid*., para. 1.16.

altogether different matter to suggest that the Court has jurisdiction to settle disputes concerning the interpretation and application of the 1929-1930 agreements. The general statement in Article XXXI of the Pact, to the effect that the parties recognize the jurisdiction of the Court "in all disputes. . . concerning. . .the interpretation of a treaty", evidently cannot override the specific temporal limitation to that jurisdiction, which is set forth in Article VI of the Pact.

## CHAPTER III
## THE PRACTICE OF THE PARTIES

3.1. The maritime-boundary parallel agreed upon by the Parties, as described in detail in Chapter II above, has been observed and applied by both Chile and Peru for more than half a century, in respect of a wide range of activities within their maritime zones. Both Chile and Peru have enjoyed quiet possession of the maritime area on their own side of the parallel of latitude of Hito No. 1. Peru does not deny the existence and continued application of that parallel by the Parties, but now challenges the character of the dividing line. It claims that the line was provisional and for limited purposes only, *viz.* fisheries, rather than an all-purpose maritime boundary.

3.2. This Chapter will test Peru's claim by addressing a range of the Parties' practice after the 1952 Santiago Declaration and the 1954 Agreement Relating to a Special Maritime Frontier Zone. That practice can support only one conclusion, namely that the Hito No. 1 parallel has been observed as the Parties' all-purpose maritime boundary. In outline:

*(a)* As will be seen in Sections 1 and 2, in 1955 (the year after the 1954 Inter-State Conference at which the Agreement Relating to a Special Maritime Frontier Zone was concluded), Peru adopted domestic legislation and both Parties undertook a treaty initiative confirming their understanding that a maritime boundary was in place between them, on the basis of Article IV of the Santiago Declaration.

*(b)* Section 3 summarizes Chile's negotiations with Bolivia and related consultation with Peru, in 1975-1976, concerning the possibility of granting Bolivia direct access to the sea in the form of a corridor adjoining Peru's territory. In 1976, Peru was consulted on the proposed corridor and the attendant maritime zone for Bolivia, whose northern boundary would have remained the parallel of Hito No. 1. Peru raised no objection or concern. The records of the 1975-1976

negotiations were published at the time by the Government of Chile[525]. This publication elicited no protest from Peru.

*(c)* Section 4 addresses the issue of cartographic evidence and its legal import. The evidence is that Peru has formally authorized the publication of maps depicting the maritime boundary with Chile; and that when Chile started depicting the boundary on naval charts in 1992, Peru failed to react until 2000, when it started preparing its present claim.

*(d)* Section 5 describes aspects of the broad spectrum of the practice of Chile and Peru, including monitoring of vessels' entry into and exit from Peru's maritime dominion, Peru's control of the airspace above its maritime dominion, authorization for scientific research and laying of a submarine cable system. The totality of this evidence confirms the existence of an all-purpose maritime boundary between the Parties.

*(e)* Lastly, Section 6 deals with Peru's reliance on an internal note of Chile from 1964 and Peru's Bákula Memorandum of 1986. These papers are unavailing to Peru's case. The Chilean note concluded that a maritime boundary was in place following the parallel at the point at which the land boundary reached the sea. As for the Bákula Memorandum, it was a call for renegotiation of the existing boundary.

## Section 1. Peru's Supreme Resolution (1955): Implementation of the Boundaries Agreed in Article IV of the Santiago Declaration

3.3. One month after the Lima Inter-State Conference of December 1954, Peru issued a Supreme Resolution referring to the perimeter of its "maritime

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[525] *Historia de las Negociaciones Chileno-Bolivianas — 1975-1978*, 1978. Relevant extracts may be found in **Annexes 4**, **25 and 87**.

dominion". The preamble and operative provisions of Supreme Resolution No. 23 of January 1955 read as follows:

> "Whereas it is necessary to specify in cartographic and geodesic work the manner of determining the Peruvian maritime zone of 200 miles referred to in the Supreme Decree of 1 August 1947 and the Joint Declaration signed in Santiago on 18 August 1952 by Peru, Chile and Ecuador;
>
> IT IS HEREBY RESOLVED:
>
> 1 – The said zone shall be limited at sea by a line parallel to the Peruvian coast and at a constant distance of 200 nautical miles from it;
>
> 2 – In accordance with clause 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 reaches the sea."[526]

3.4. A plain-terms, good-faith reading of Article 2 is that Peru considered Article IV of the Santiago Declaration to have delimited Peru's lateral maritime boundaries in the north and the south[527]. In response, Peru argues that the 1955 Supreme Resolution evidenced only Peru's acceptance of a provisional line for specific purposes, but not of an all-purpose maritime boundary[528]. Peru also says that the "only reference to a parallel" in the Supreme Decree can be explained on the basis of Peru's interpretation of Article IV of the Santiago Declaration, namely that it refers only to Peru's northern limit with Ecuador[529].

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526 1955 Supreme Resolution, **Annex 9 to the Memorial**.

527 See Counter-Memorial, paras 4.30-4.31.

528 See Reply, para. 4.43 and footnote 407.

529 *Ibid*., p. 318, footnote 604.

3.5. There are three major difficulties with Peru's present interpretation. First, nothing in the text of the 1955 Supreme Resolution suggests that the limits therein specified apply only provisionally or only to fisheries. Rather, the text deals with Peru's "maritime zone", in unqualified terms, as "referred to" in Peru's 1947 Supreme Decree and the Santiago Declaration[530]. Both of these texts claimed "sovereignty and jurisdiction" over the sea along the coasts, the seabed and subsoil, to a minimum distance of 200M, and did so without any temporal limitation. The 1955 Supreme Resolution was promulgated for the purpose of depicting correctly that all-purpose maritime zone in cartographic and geodesic work.

3.6. Second, Peru's interpretation is inconsistent with its own interpretation of Article IV of the Santiago Declaration. If Article IV simply restricted the maritime zone of islands, that limit would not reach the 200M outer limit that Peru claims that it had by applying the envelope-of-arcs-of-circles method. This was illustrated on **Figure 7** of the Counter-Memorial[531]. Article 2 of the 1955 Supreme Resolution would, on Peru's interpretation, have no *effet utile*: in the south, there would be no operative parallel of latitude at all; and in the north, the parallel of latitude would stop before reaching the outer limit of Peru's maritime zone, and could not operate as a lateral limit to the full extent of Peru's maritime zone. That is clearly not a natural, logical or good-faith interpretation of the plain terms of the Supreme Resolution.

3.7. Third, Article 2 of the Supreme Resolution refers to "[the line] of the corresponding parallel [*la [línea] del paralelo correspondiente*]"[532]: if the intention were to refer only to the northern boundary parallel, it would have been easy and more straightforward either to specify the latitude of that one parallel or to say the "parallel at the point where the frontier with Ecuador reaches the sea".

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530 1955 Supreme Resolution, **Annex 9 to the Memorial**.

531 Counter-Memorial, Vol. I, after p. 88.

532 1955 Supreme Resolution, **Annex 9 to the Memorial**, Art. 2.

Either formulation would have been easier to apply in "cartographic and geodesic work".

3.8. Ordinarily, "it is for each State, in the first instance, to interpret its own domestic law. The Court does not, in principle, have the power to substitute its own interpretation for that of the national authorities"[533]. However:

> "Exceptionally, where a State puts forward a manifestly incorrect interpretation of its domestic law, particularly for the purpose of gaining an advantage in a pending case, it is for the Court to adopt what it finds to be the proper interpretation."[534]

3.9. Chile respectfully submits that this exception applies to the incomprehensible reading of Peru's 1955 Supreme Resolution that Peru advances in this case. That reading derives from Peru's desire to force-fit the Supreme Resolution to the needs of its case.

3.10. Chile's interpretation of the 1955 Supreme Resolution is straightforward. The Supreme Resolution was intended to ensure a correct depiction of "the Peruvian maritime zone of 200 miles" in cartographic and geodesic work. The maritime zone is stated to be defined in the 1947 Supreme Decree and the 1952 Santiago Declaration. Under the 1947 Supreme Decree Peru's maritime zone could not extend beyond the two parallels of latitude passing through Peru's two land-boundary termini, to the north (with Ecuador) and the south (with Chile)[535]. Article IV of the Santiago Declaration confirms that Peru's maritime zone is bounded by the two parallels at the points at which the land boundaries with Ecuador (in the north) and with Chile (in the south) meet the sea. In its 1955 Supreme Resolution, Peru clearly gave effect in its

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533 *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), I.C.J. Judgment, 30 November 2010*, para. 70.

534 *Ibid*.

535 1947 Peruvian Supreme Decree, **Annex 6 to the Memorial**.

domestic legal system to the delimitation that it had agreed under international law in Article IV of the Santiago Declaration[536].

## Section 2. Protocol of Accession to the Santiago Declaration (1955)

3.11. In the Accession Protocol of 1955, Chile, Ecuador and Peru agreed to open to accession by Latin American countries parts of the Santiago Declaration, namely the "fundamental principles" contained in its preamble and the rules (or "norms") set out in its Articles I, II, III and V[537]. Article IV on maritime delimitation was excluded from the norms of the Santiago Declaration to which other States would be able to accede. The reason for this exclusion is significant for the present case[538]. Article IV was excluded so as to allow acceding States to determine the boundaries between overlapping maritime entitlements in areas where a parallel of latitude under Article IV of the Santiago Declaration would not be suitable because of geographic configurations different from those of the original three States parties, Chile, Peru and Ecuador.

3.12. Specifically, Peru proposed in June 1955 that Article IV of the Santiago Declaration, "which establish[es] the frontier between the countries", should be excluded from the Accession Protocol because it would be "inapplicable in other locations"[539]. For its part, Chile similarly believed that the use of parallels of latitude may be "practically inapplicable" in other countries[540].

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536 Also see Counter-Memorial, para. 3.56.

537 Protocol of Accession to the Declaration of Santiago on "Maritime Zone", signed at Quito on 6 October 1955, **Annex 52 to the Memorial**, second and third paragraphs.

538 See Counter-Memorial, paras 3.121-3.126.

539 Memorandum of 23 June 1955 from the Peruvian Embassy in Ecuador to the Government of Ecuador, **Annex 70 to the Counter-Memorial**, first page.

540 Memorandum of 14 August 1955 by the Chilean Embassy in Ecuador, "Observations on the Ecuadorean draft of the Protocol of Accession to the Agreements of Santiago on Maritime Zone", **Annex 71 to the Counter-Memorial**, para. 2.

3.13. In its Reply Peru seeks to cast doubt on both of those two contemporaneous documents. In respect of its own proposal, Peru now says that it was contained in a "non-paper"[541] of June 1955, which set forth "talking points" with Ecuador and related to the boundary between these two States only[542]. Whatever the status of the communication may have been, it sets forth Peru's position on the meaning and effect of Article IV of the Santiago Declaration. Peru itself does not contend otherwise. More importantly, from the fact that Peru's communication was addressed to Ecuador it does not follow that the communication concerned only the Peru-Ecuador boundary. Indeed, it is clear that in material part the communication concerned the effect which Article IV would have on acceding States, and in that context it is said that this provision "establish[es] the frontier between the countries [*los países*]" — not "our two countries", but rather all three existing States parties.

3.14. As for Chile's position at the time, Peru cites an internal Peruvian document which purportedly records Chile's position as being that Article IV "only applies [to] the delimitation between the maritime zones of the signatories to the case of islands"[543], and hence (Peru argues) not between Chile and Peru[544]. This is a two-paragraph letter from the Peruvian chargé d'affaires in Santiago to the Peruvian Foreign Minister about a discussion at the Chilean Foreign Ministry on a draft of the Accession Protocol. It is difficult to credit this short letter as properly recording Chile's position. It gives no indication of when or with whom the meeting at Chile's Foreign Ministry took place, nor does it supply any detail of the discussion that ensued on other provisions on the draft Protocol. Chile has found no record of the meeting in its archives.

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541 This is how Peru describes the Memorandum of 23 June 1955, **Annex 70 to the Counter-Memorial**: Reply, para. 4.58.

542 See Reply, para. 4.58.

543 Official Letter No. 5-4-Y/68 of 11 July 1955 from the Peruvian chargé d'affaires to Chile to the Minister of Foreign Affairs of Peru, **Annex 8 to the Reply**, with a translation of the first paragraph at **Annex 80**.

544 See Reply, para. 4.59.

3.15. In fact, Peru's internal document is inconsistent with the record of Chile's official position, which was communicated to Ecuador in August 1955, very shortly after Peru's internal document. Chile stated that Article IV would be practically inapplicable to countries *other* than the original three States parties[545]. Chile did not state that there was no need to exclude Article IV from the Accession Protocol on grounds that it applied only in the case of islands. What is more, the internal document of Peru says that the Ministry of Foreign Affairs of Chile was already discussing the draft Protocol with the Ecuadorean Embassy in Chile[546]. If the Peruvian internal letter is to be credited, in these discussions Chile would have taken a view that was different from the communication that followed in August. Yet so far as Chile is aware Ecuador has never suggested that the August communication involved a change of position from the earlier discussions with the Embassy.

## Section 3. Peru's Acknowledgement of the Maritime Boundary in the Context of a Possible Access to the Sea for Bolivia (1975-1976)

3.16. This Section describes negotiations between Chile and Bolivia in 1975-1976, which envisaged an exchange of territories. Had these negotiations been successful, Bolivia would have acquired access to the sea in the form of a corridor between Peru and Chile. The maritime zone appertaining to that corridor was also discussed in the negotiations. Both Chile and Bolivia proceeded on the explicit basis that the existing maritime boundary, following the parallel of latitude of Hito No. 1, would delimit the envisaged Bolivian maritime zone vis-à-vis Peru. In 1976, Peru was specifically consulted on the matter, as was required under the 1929 Treaty of Lima, and it expressed no objection or reservation in that regard.

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545 Memorandum of 14 August 1955 by the Chilean Embassy in Ecuador, "Observations on the Ecuadorean draft of the Protocol of Accession to the Agreements of Santiago on Maritime Zone", **Annex 71 to the Counter-Memorial**, para. 2.

546 Official Letter No. 5-4-Y/68 of 11 July 1955 from the Peruvian chargé d'affaires to Chile to the Minister of Foreign Affairs of Peru, **Annex 8 to the Reply**, with a translation of the first paragraph at **Annex 80**.

3.17. The Presidents of Chile and Bolivia met at the frontier of the two States in February 1975 and determined that dialogue should continue at various levels to search for agreements on bilateral issues. One of the issues specifically mentioned in the Presidential joint declaration, called the Act of Charaña, was Bolivia's access to the sea[547]. Following this, Chile and Bolivia commenced negotiations on a set of arrangements to provide Bolivia access to the sea. Negotiations had reached an advanced stage by late-1975 and continued well into 1976[548]. As part of the proposed exchange of territory, Chile would cede to Bolivia a corridor to the sea. The cession of that corridor would have resulted in Bolivia's acquiring the part of Chile's maritime zone that corresponded to the coastal front of the territory to be ceded. Thus, Bolivia would acquire a maritime zone between the Hito No. 1 parallel, which constitutes the Chile-Peru maritime boundary, to the north, and another parallel, to the south, which would pass through the point at which the new land boundary between Chile and Bolivia would reach the sea. This was accepted by Bolivia.

3.18. The cession of Chilean territory along the Chile-Peru land boundary required the consent of Peru, pursuant to Article 1 of the Supplementary Protocol to the 1929 Treaty of Lima[549]. Thus, Peru was involved in the process from early in 1976, and a series of discussions were held between Chile and Peru that year. As will be seen below, Peru was fully informed of the arrangement envisaged for the maritime boundary and expressed no reservation or opposition to it. In fact, Peru acknowledged the existence and course of the Chile-Peru maritime

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547 Act of Charaña, signed by the Presidents of Chile and Bolivia at Charaña on 8 February 1975, reproduced in Ministry of Foreign Affairs of Chile, *Historia de las Negociaciones Chileno-Bolivianas: 1975-1978*, 1978, **Annex 4**, p. 41.

548 The key negotiating texts are in the public domain, reproduced in Ministry of Foreign Affairs of Chile, *Historia de las Negociaciones Chileno-Bolivianas — 1975-1978*, 1978.

549 Article 1 of the Supplementary Protocol to the Treaty of Lima reads in material part: "The Governments of Chile and Peru shall not, without previous agreement between them, cede to any third Power the whole or part of the territories which, in conformity with the [Treaty of Lima], come under their respective sovereignty", **Annex 45 to the Memorial**.

boundary in one of the Chile-Peru sessions in 1976. The relevant events are as follows.

3.19. The Chilean proposal to Bolivia included a brief description of the land territory to be exchanged with Bolivia and the maritime zone attendant to the land territory to be ceded to Bolivia. After describing the northern and southern boundaries of the land territory which Bolivia would acquire (the northern boundary being the Chile-Peru land boundary under the 1929 Treaty of Lima), Chile's proposal went on to say:

> "[T]he cession will include the land territory thus described and the maritime territory *between the parallels of the extreme points of the coast* [*comprendido entre los paralelos de los puntos extremos de la costa*] that will be ceded (territorial sea, economic zone and continental shelf)."[550] (Emphasis added.)

3.20. Chile was confirming that the parallel of latitude of Hito No. 1 would continue to apply as an all-purpose maritime boundary between all the maritime zones of Peru and Bolivia after the exchange of territories, and was proposing that the same method of delimitation be followed as between Chile and Bolivia.

3.21. Chile communicated this proposal to Peru shortly thereafter. Peru acknowledged receipt of it in January 1976[551]. It did not raise any concern over the "maritime territory" that Chile proposed to cede to Bolivia. (By contrast, Peru expressed concern on issues related to its interests in Arica[552].) It is of note

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550 Note No. 686 of 19 December 1975 from the Chilean Minister of Foreign Affairs to the Bolivian Ambassador to Chile, reproduced in Ministry of Foreign Affairs of Chile, *Historia de las Negociaciones Chileno-Bolivianas: 1975-1978*, 1978, **Annex 25**, p. 44.

551 Note No. 6-Y/1 of 29 January 1976 from the Minister of Foreign Affairs of Peru to the Minister of Foreign Affairs of Chile, **Annex 26**, second paragraph.

552 Peru was concerned about the connection between Arica and Tacna which could be altered if a corridor along the Chile-Peru boundary was transferred to Bolivia. Peru also referred to the full implementation of Chile's obligations vis-à-vis Peru pursuant

that the *ad hoc* commission created in Peru to discuss the proposed cession was chaired by the former President of Peru (and the Court) Bustamante y Rivero, who had co-signed the Peruvian Supreme Decree of 1947. If there had been any inconsistency or overlap between Peru's maritime zone and the proposed maritime zone for Bolivia, as Peru's present case suggests, the *ad hoc* commission would not have failed to notice it.

3.22. Representatives of the Ministries of Foreign Affairs of Peru and Chile held a first round of discussions on the proposed cession in April 1976. A second round of discussions took place between 5 and 9 July 1976. The agenda agreed for this round, as recorded in an internal Chilean document, included a discussion on maritime and air spaces[553]. According to Chile's record of the meeting of 8 July 1976 (there were no joint minutes), the Chilean delegation stated the position in respect of the maritime boundary between Chile and Peru as follows:

> "[T]he agreements signed between Chile, Ecuador and Peru in 1952, and another one, signed in 1954, which established the parallels corresponding to the points on the coast where the boundary is as the maritime boundary, have been taken into account. In the same agreement, a maximum tolerance of 10 miles to the south and to the north of the boundary was established for the navigation of Chilean and Peruvian fishing vessels beyond the territorial boundary of 12 miles from the coast, but with no right to fish.

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to the Treaty of Lima. See Note No. 6-Y/1 of 29 January 1976 from the Minister of Foreign Affairs of Peru to the Minister of Foreign Affairs of Chile, **Annex 26**, third paragraph.

553 Record of the first Meeting of the second round of Chile-Peru Discussions, 5 July 1976, **Annex 54**.

> He stated that Chile considers it necessary to obtain assurances of Bolivia's full compliance with the 1954 agreement."[554]

3.23. The 1952 agreement is of course the Santiago Declaration; and the 1954 agreement is the Agreement Relating to a Special Maritime Frontier Zone. It is in keeping with the rules of international law that the State to which territory would be ceded would be bound by the existing agreements between the ceding State (Chile) and the adjacent State (Peru) in respect of the maritime zone appertaining to the coast of the territory, including the boundaries of the maritime zone[555].

3.24. Two members of the Peruvian delegation spoke for Peru, and confirmed agreement with Chile's position. Ambassador Antonio Belaúnde stated that "he has not identified major problems with respect to the sea"[556]. Both he and Ambassador Arturo García considered that the Agreement Relating to a Special Maritime Frontier Zone settled the maritime boundary issue[557].

3.25. In short, Peru did not raise any issue with the Chilean proposal that Bolivia would acquire a maritime zone in the form of a corridor between the two parallels passing through the seaward termini of the existing Chile-Peru land boundary (which would become the new Peru-Bolivia boundary) and the new Chile-Bolivia land boundary. The only point of discussion was the application of the 10M tolerance-zone régime under the Agreement Relating to a Special

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554 Record of the fourth Meeting of the second round of Chile-Peru Discussions, 8 July 1976, **Annex 55**.

555 See Vienna Convention on Succession of States in Respect of Treaties, signed at Vienna on 23 August 1978, 1946 *UNTS* 3 (entered into force on 6 November 1996), Art. 11; *Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali), Judgment*, *I.C.J. Reports 1986*, p. 566, para. 24; *Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau*, Decision, 14 February 1985, *RIAA*, Vol. XIX, p. 165, para. 40.

556 Record of the fourth Meeting of the second round of Chile-Peru discussions on 8 July 1976, **Annex 55**.

557 *Ibid*.

Maritime Frontier Zone to the Bolivian maritime corridor, because this entire corridor was to be 5.1M wide (see **Figure 72**).

3.26. In the end, Peru refused to accept Chile's proposal for granting Bolivia access to the sea through cession of territory. In November 1976, Peru made a counter-proposal. To the extent relevant here, Peru's counter-proposal involved:

*(a)* "Establishment in the province of Arica, after the corridor, of a territorial area under shared sovereignty of the three States, Bolivia, Chile and Peru, located to the south of the Peru-Chile frontier, between the Concordia Line, the Tacna-Arica road, the northern area of the city of Arica and the coast of the Pacific Ocean"[558]; and

*(b)* Bolivia's exclusive sovereignty over the sea adjacent to the coastline of the area to be placed under shared sovereignty[559].

3.27. A sketch-map included in a scholarly study by Dr. St. John, an international-relations specialist who lectures frequently at Peru's Diplomatic Academy, illustrates the counter-proposal by Peru, according to which the maritime zone to be ceded to Bolivia would be bounded by the Hito No. 1 parallel and a parallel corresponding to the northern area of the city of Arica. The lateral limits of the proposed maritime zone for Bolivia follow parallels of latitude to the north and south[560]. Peru did not lay claim to that proposed

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558 Memorandum of 18 November 1976 of the Embassy of Peru in Chile, reproduced in Ministry of Foreign Affairs of Chile, *Historia de las Negociaciones Chileno-Bolivianas: 1975-1978*, 1978, **Annex 87**, p. 50, para. 2, which reads in Spanish:

> "Establecimiento en la provincia de Arica, a continuación del corredor, de una área territorial bajo la soberanía compartida de los tres Estados, Bolivia, Chile y Perú, situada al sur de la frontera peruano-chilena, entre la Línea de Concordia, la carretera Tacna-Arica, el casco norte de la ciudad de Arica y el Litoral del Océano Pacífico".

559 *Ibid*., p. 50, para. 4.

560 See **Figure 73**.

maritime zone in 1976. **Figure 72** illustrates how Peru's present claim ("*área en controversia*") overlaps with the area Peru proposed as the maritime zone for Bolivia in 1976.

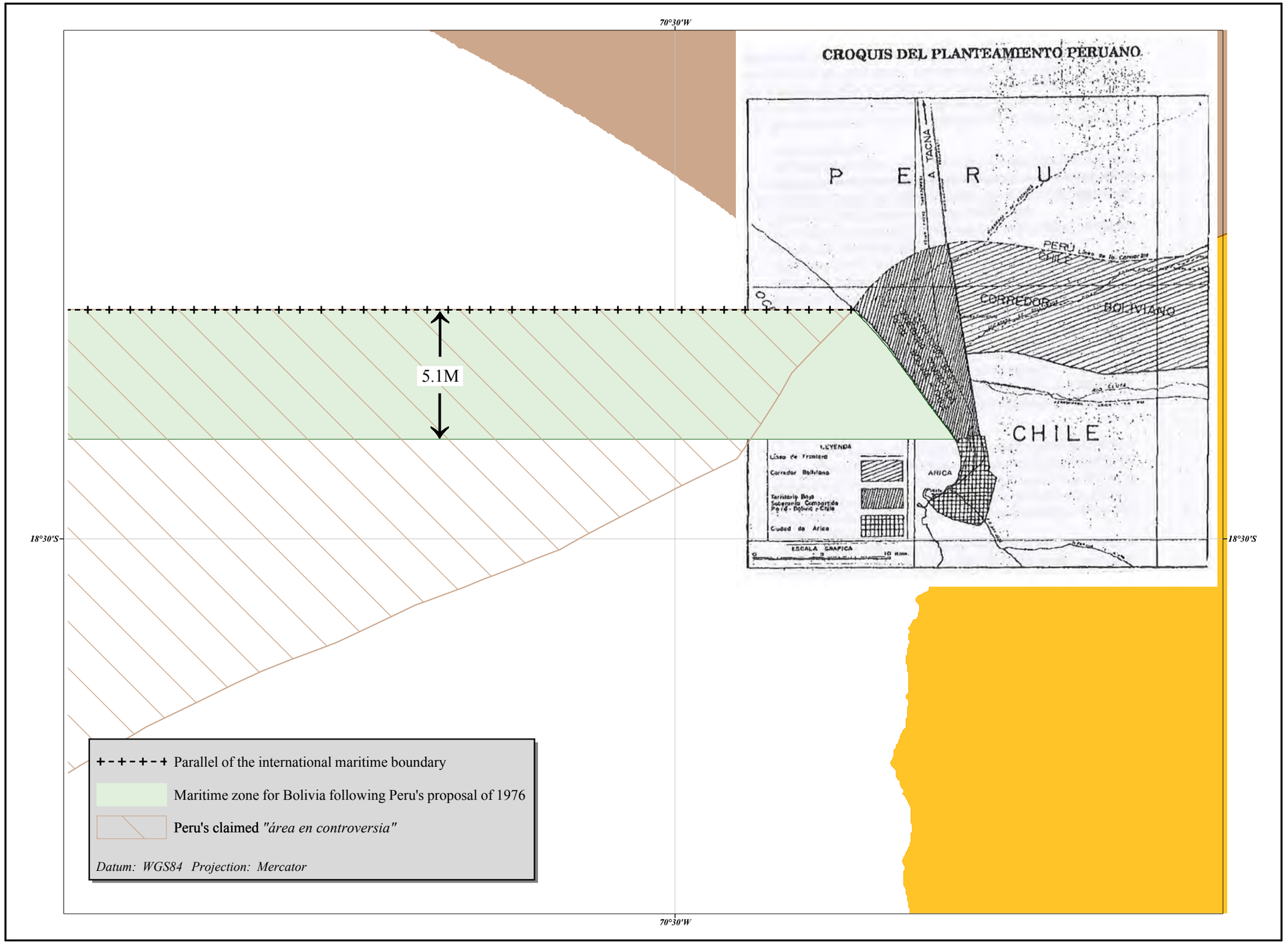
3.28. In conclusion, it is clear that Peru had accepted that any maritime area to be ceded to Bolivia would be bounded by the Hito No. 1 parallel. Peru's counter-proposal in November 1976 did not suggest any change in this position. What is more, Peru's counter-proposal did not raise any issue of potential overlap between the "maritime dominion" of Peru and the maritime area which Bolivia would acquire. There was no overlap because the Peruvian "maritime dominion" was bounded by the Hito No. 1 parallel. In 1976, Chile and Peru were again *ad idem* on the existence of a defined maritime boundary between them.

## Section 4. The Parties' Cartographic Depiction of the Maritime Boundary

3.29. Cartographic evidence in this case is relevant in two respects. First, as discussed in the Counter-Memorial (paragraphs 3.146-3.151), Peru's Foreign Ministry authorized maps depicting Peru's maritime zone as limited by two parallels, to the north and south (sometimes more specifically referring to the parallel of Hito No. 1 in the south). Such depiction of Peru's maritime zone is in conformity with Peru's Supreme Decree of 1947, the 1952 Santiago Declaration and the 1955 Supreme Resolution. Peru argues that the relevant maps cannot "be said to reflect the 'physical expressions of the will of the State or States concerned'" because they were not published by the State[561]. Assuming in Peru's favour this to be the case, on any view Peru's official authorization and approval of the maps which were reproduced in widely disseminated school textbooks and other publications constitute, at the very least, evidence confirming the conclusions to be drawn from an analysis of the relevant agreements and State practice. The maps officially authorized and approved by Peru constitute its

[561] Reply, para. 4.132.

Overlap of Peru's claimed *"área en controversia"* with the maritime area appertaining to Chile and proposed by Peru in 1976 as maritime zone for Bolivia

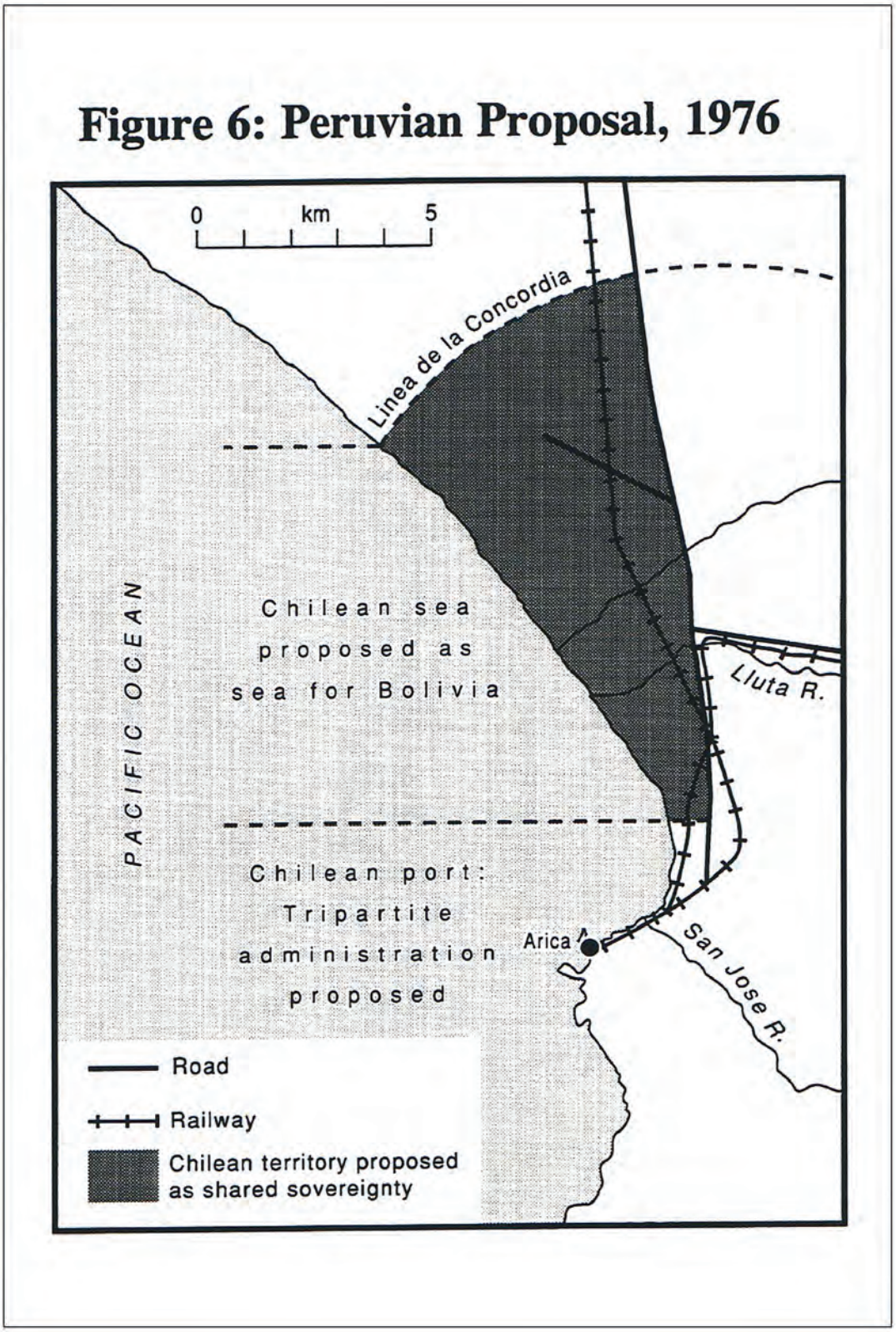



Sketch-map of the Peruvian proposal of 1976 in J. de la Puente Radbill, "La mediterraneidad de Bolivia", in E. Ferrero Costa (ed.), *Relaciones del Perú con Chile y Bolivia,* 1989, p. 54

*Prepared for the Ministry of Foreign Affairs, Chile, by UKHO Law of the Sea Consultancy*

**Figure 73**

Diagram showing the Peruvian Proposal of 1976 by R. B. St. John (1994)




Source: R. B. St. John, "the Bolivia-Chile-Peru Dispute in the Atacama Desert", in International Boundaries Research Unit, Boundary & Territory Briefing, Vol. 1(6), 1994, p. 23

confirmation of the existence of a maritime boundary with Chile, and of the fact that the course of this boundary follows the parallel of latitude of Hito No. 1[562]. Peru's authorization and approval of the maps amount to an adoption of the position depicted therein, thereby lending them greater probative value[563]. The Court will "give particular attention to reliable evidence acknowledging facts or conduct unfavourable to the State represented by the person making them"[564]. Contrary to Peru's assertion[565], maps which are authorized and approved (i.e., "adopted"[566]) by a State, can constitute admissions against interest, in the same way as other documents authorized, approved or adopted by a State[567].

3.30. Secondly, when Chile's official charts started depicting the maritime boundary with Peru in 1992 and 1994, Peru did not react. The lack of reaction on Peru's part is consistent only with an understanding that the change in Chile's charting practice reflected no change in Chile's substantive position on the existence and course of the maritime boundary[568]. Peru reacted for the first time several years later, in 2000, to a chart that had been issued in 1998.

3.31. Peru seeks to make an argument from the fact that Chilean charts issued after the Chile-Argentina maritime-boundary delimitation under the Peace

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562 See *Dispute between Argentina and Chile concerning the Beagle Channel*, 18 February 1977, *RIAA*, Vol. XXI, pp. 163-164, para. 137.

563 *Decision regarding delimitation of the border between Eritrea and Ethiopia*, Award, 13 April 2002, *RIAA*, Vol. XXV, p. 114, para. 3.21.

564 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 201, para. 61.

565 Reply, para. 4.133.

566 *Decision regarding delimitation of the border between Eritrea and Ethiopia*, Award, 13 April 2002, *RIAA*, Vol. XXV, p. 114, para. 3.21.

567 See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro, Judgment, I.C.J. Reports 2007*, para. 227; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 201, para. 61; *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 41, para. 64.

568 Counter-Memorial, para. 1.44.

Treaty of 1984 do depict that boundary, while the Chile-Peru maritime boundary was depicted on charts for the first time in 1992. Peru seeks to argue from this that Chile believed there not to be a maritime boundary with Peru[569]. There is nothing here. As a matter of international law, there is no requirement to depict international maritime boundaries in charts[570]. Nor is there any such requirement in Chilean law. So if a maritime boundary is not depicted on charts, this cannot be said to be probative of the absence of a boundary. Thus, so far as Chile is aware, Peru has not depicted its maritime boundary to the north, with Ecuador, in its own official charts[571], even though Peru and Ecuador were in agreement on the existence of a maritime boundary (although perhaps Peru no longer agrees with Ecuador on the legal foundation for that boundary[572]). As a matter of fact, the depiction on Chilean charts of the maritime-boundary line with Argentina in the south was a natural consequence of the resolution of a long and complex dispute in the Beagle Channel. By contrast, Chile and Peru peacefully possessed and controlled their respective areas to the north and south of the parallel of Hito No. 1 without conflict or dispute for more than half a century. There is therefore no inconsistency in Chile's practice.

3.32. Peru also argues that the authorization of various maps by its Foreign Ministry did not extend to the depiction of a maritime boundary[573]. This is based on a manifestly incorrect reading of Peru's domestic legislation which confers power upon the Foreign Ministry to authorize such publications, as will be seen in Subsection A below. In Subsection B, Chile will also explain the irrelevance

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569 Reply, paras 4.115-4.140.

570 See, e.g., UNCLOS, Arts 15, 74 and 83, which specify that delimitation zones should "be effected by agreement" and do not require the delimitation to be depicted on a map or chart. Also see *Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), I.C.J. Judgment, 23 May 2008*, p. 74, para. 272.

571 Peru accepted Ecuador's chart IOA 42 which depicts the Ecuador-Peru maritime boundary; see paras 4.25-4.26 below.

572 See Reply, p. 192, footnote 356; and paras 4.11-4.20 below.

573 See Reply, paras 4.129-4.131.

of two foreign maps relied upon by Peru which allegedly depict a perpendicular line dividing the Chilean and Peruvian waters (see **Figure R-4.5** of the Reply[574]) or recognize the area to which Peru lays claim as a disputed one (see **Figure R-4.6** of the Reply[575]).

## A. Peru Officially Authorized the Depiction of its "Maritime Dominion" Bounded by Parallels to the North and South

3.33. In the Counter-Memorial, Chile presented four school textbooks on the geography of Peru and the World, and one Atlas of Peru, which depicted Peru's "maritime dominion" bounded by two parallels, to the north and the south, as its lateral boundaries[576]. (Chile also presented many other pieces of cartography to the same effect, which were part of Peru's official school curriculum[577].) The four textbooks were part of the official school curriculum to teach students about Peru's political boundaries. Both the textbooks and the Atlas were formally authorized by the Foreign Ministry of Peru pursuant to Supreme Decree No. 570 of 1957. To recall, under that Supreme Decree, prior authorization by the Foreign Ministry is required for printing or circulating any "geographic or cartographic publication *referring to or representing the frontier zones of the Nation*"[578]. In its Reply Peru has presented a number of defences to this cartographic evidence, which are addressed in the following paragraphs.

3.34. Contrary to what Peru suggests, the number of these publications is immaterial. So far as Chile is aware, the Foreign Ministry of Peru has not

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574 Reply, Vol. III, p. 55.

575 *Ibid*., Vol. III, p. 57.

576 See Counter-Memorial, paras 3.146-3.151 and **Figures 37-41 to the Counter-Memorial**, Vol. I, after p. 254.

577 See **Figures 44-63 to the Counter-Memorial**, Vol. VI. Many of the relevant publications were textbooks authorized by the Peruvian Ministry of Public Education or stated to be in accordance with Peru's official school curriculum.

578 Supreme Decree No. 570 of 5 July 1957, **Annex 11 to the Memorial** (emphasis added).

authorized publications depicting different lateral boundaries to the north or the south. Nor has Peru produced any such publication before the Court. It is equally immaterial that four of the five texts were by the same author[579]: each edition was authorized by a separate resolution of the Foreign Ministry in the period between 1982 and 1992[580]. This fact serves only to underscore Peru's continued approval over time of the same depiction of its maritime boundaries.

3.35. According to Peru, the caption of the relevant maps indicates that they show only the author's interpretation of the 1947 proclamation (Supreme Decree No. 781) rather than an international boundary under the Santiago Declaration[581]. If so, this supports Chile's position. On Peru's reading, these maps show the southern limit of Peru's maritime dominion, which by definition coincides with the international boundary with Chile, since the 1955 Supreme Resolution cites the 1947 proclamation and the Santiago Declaration as the two sources for determining the perimeter of Peru's maritime zone[582]. In addition, one of the five maps, taken from an Atlas of 1999 (see **Figure 41** of the Counter-Memorial[583]), is accompanied by an explanatory note that Peru's "[m]aritime frontier" was "[e]stablished. . .according to Supreme Decree No. 781" and "reaffirmed in the Declaration of Santiago, in 1952"[584].

3.36. Authorization under Supreme Decree No. 570 relates to the "frontier zones" of Peru, a term which Peru suggests does not include maritime boundaries. Yet the notion of "frontier zones" obviously includes international boundaries, both at sea and on land. Indeed, the text of the two Foreign Ministry

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579 See Reply, para. 4.128.

580 Details of the authorization by the Foreign Ministry, and in some cases copies of the communications authorizing the publication, are set out in **Figures 37-41 to the Counter-Memorial**, Vol. I, after p. 254.

581 See Reply, para. 4.128.

582 1955 Supreme Resolution, **Annex 9 to the Memorial**, preambular recital.

583 Counter-Memorial, Vol. I, after p. 256.

584 *Ibid*., para. 3.151.

resolutions which Chile has been able to obtain[585] specifically confirms that "Peru's international boundaries have been drawn in an acceptable way".

3.37. Further, Peru misrepresents Ministerial Resolution No. 458 of 1961, which relates to authorizations granted by the Peruvian Foreign Ministry under Supreme Decree 781. Under this Resolution, the Ministry's authorizations do not "imply, in any way, the approval of concepts and commentaries relating to the historic and cartographic material"[586]. Peru claims that authorization by its Foreign Ministry does not reflect Peru's position as to the accuracy of the depiction of the maritime dominion in the authorized maps[587]. The wording of the Resolution, however, makes it clear that authorization covers boundary lines as delimited. The relevant part of the Ministerial Resolution, which Peru fails to quote, reads:

> "The authorization that the Ministry of Foreign Affairs shall grant, in conformity with the afore-mentioned Supreme Decrees [including Supreme Decree No. 570 of 1957], to the publications related to frontiers, maps and other cartographic material, *only implies the correction* [*corrección*] *of data that is directly related to the delimitation of Peru's bordering zones, in accordance with positive international law on this matter*"[588]. (Emphasis added.)

3.38. Thus, a depiction of Peru's "maritime dominion" bounded by two parallels to the north and south which has been authorized by the Foreign Ministry under Supreme Decree No. 570 and Ministerial Resolution No. 458,

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585 Reproduced in **Figures 37 and 38 to the Counter-Memorial**, Vol. I, after p. 254.

586 Ministerial Resolution No. 458 of 28 April 1961, issued by the Ministry of Foreign Affairs of Peru, **Annex 9 to the Reply**.

587 See Reply, para. 4.129.

588 Ministerial Resolution No. 458 of 28 April 1961, issued by the Ministry of Foreign Affairs of Peru, **Annex 9 to the Reply**.

"following the corresponding technical inquiry"[589], evidences Peru's understanding of the "delimitation" of its maritime dominion "in accordance with positive international law"[590].

3.39. What is more, Peru has not produced any official maps showing a boundary other than the Hito No. 1 parallel or an entitlement by Peru to the zone that it now says remains to be delimited. Although Peru has now produced three maps published by official sources[591], these maps do not purport to show Peru's lateral maritime boundaries or even Peru's entitlement to undelimited maritime areas. Two of these three maps (**Figures R-4.9** and **R-4.15** of the Reply[592]) cannot be regarded as depicting the exact perimeter of Peru's maritime zone or the maximum extent of Peru's potential maritime claim. They only show a maritime area, shaded in light blue, stated to be within the "limit of 200 miles" (although it is not clear how this limit was measured). That area extends well to the north of the parallel of the boundary with Ecuador, into Ecuadorean waters. As for the third sketch-map, at **Figure R-4.14** of the Reply[593] (attributed to Peru's Ministry of Fisheries), this does not depict the entire perimeter of Peru's maritime zone, but only the outer-limit projections of 12M and 200M from the Peruvian coast (following what appears to be a *tracé parallèle*). And that outer limit extends to the north beyond the boundary parallel with Ecuador.

3.40. It seems, in fact, that finding further examples of authorized or authoritative Peruvian maps depicting the existing boundary with Chile is a matter only of time and access to relevant sources. In 1989, Mr. Flores Palomino,

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589 Supreme Decree No. 570 of 5 July 1957, **Annex 11 to the Memorial**, para. 2.

590 Ministerial Resolution No. 458 of 28 April 1961, issued by the Ministry of Foreign Affairs of Peru, **Annex 9 to the Reply**, operative paragraph.

591 See Reply, paras 4.136-4.138 and **Figures R-4.9, R-4.14 and R-4.15 to the Reply**, Vol. III, pp. 63, 73 and 75.

592 Reply, Vol. III, pp. 63 and 75.

593 *Ibid*., Vol. III, p. 73.

the head of the Sea Institute of Peru (***IMARPE***) at the time[594], considered that the boundaries of the "maritime dominion" were determined by "the projection of 3° 23' Lat. South (coastal frontier with Ecuador) and 18° 20' Lat. South (coastal frontier with Chile), up to 200 miles westwards"[595]. This book was published under the auspices of Peru's National Council of Science and Technology (***CONCYTEC***). It contains a sketch-map showing Peru's "maritime dominion", which is reproduced here as **Figure 74**.

3.41. This depiction of Peru's "maritime dominion" was reproduced in a subsequent compilation published by the Peruvian Centre for International Studies (***CEPEI***) in 1992[596]. This compilation was edited by Professor Ferrero Costa, one of the Peruvian authors cited prominently in the Reply[597]. The contours of Peru's "maritime dominion" were clearly marked by the head of IMARPE and subsequently endorsed by Professor Ferrero Costa. Both of these publications were issued well after the Bákula Memorandum of 1986, in which Peru now says it communicated to Chile that no maritime boundary was extant.

## B. Irrelevance of Two Maps Relied upon by Peru

3.42. Peru has annexed to its Reply (a) a touristic map of South America published by the *Institut Géographique National* of France (***IGN***) in 2007 showing an azimuthal line without any indication that it is a boundary, which

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[594] IMARPE is an official body of Peru, currently under the auspices of the Ministry of Production, responsible for, among others, (a) studying the marine environment and biodiversity, (b) assessing the fishery resources, and (c) giving information and advice for management options on fisheries, aquaculture and the protection of the marine environment.

[595] M. Flores Palomino, *La Zona Costera del Perú: Un Ensayo de Interpretación y Proposición de su Organización para su Administración*, 1989, **Annex 175**, p. 4; also see the first paragraph of the Summary [*Resumen*].

[596] M. Vegas, "El Mar Peruano: Un Ambiente Natural - La Conservación y Utilización de sus Recursos", in E. Ferrero Costa (ed.), *El Perú, El Medio Ambiente y El Desarrollo*, 1992, **Annex 185**, p. 157 (Figure 3).

[597] Reply, para. 3.180.

appears to extend some 66M, and (b) a map issued by the Flanders Marine Institute (***VLIZ***) in 2009 (i.e., after the commencement of the present proceedings), which Peru alleges shows the "Chile-Peru Disputed Maritime Area"[598]. Both institutions have informed Chile that the maps in question have no official status. The IGN further confirmed that the line, a prolongation of the land-boundary line, does not represent the maritime frontier[599]. (This is obvious on the face of the map: boundaries are depicted by black lines punctuated by dots while the line on which Peru relies is a succession of mauve dots, which according to the legend of the map divides time zones.) As for VLIZ's map, it carries a disclaimer about the accuracy of the data on which it is based[600]. These two maps rather highlight the penury of Peru's cartographic evidence.

## Section 5. Practice of Peru and Chile Confirming Chile's Entitlement South of the Parallel of Hito No. 1

### A. INTRODUCTION

3.43. In Chapter III of the Counter-Memorial, Chile described the wide-ranging practice of the Parties subsequent to the Santiago Declaration of 1952 and the 1954 Agreement Relating to a Special Maritime Frontier Zone. The practice confirms a long-standing, undisputed, uninterrupted and in fact on-going application of a parallel of latitude as the line dividing the maritime zones of the Parties. For more than a half-century, Peru and Chile have enjoyed quiet possession of the maritime areas to the north and south of the parallel of Hito No. 1 respectively. No conflict has been reported relating to the existence of the maritime boundary between the two States. This is in stark contrast to situations

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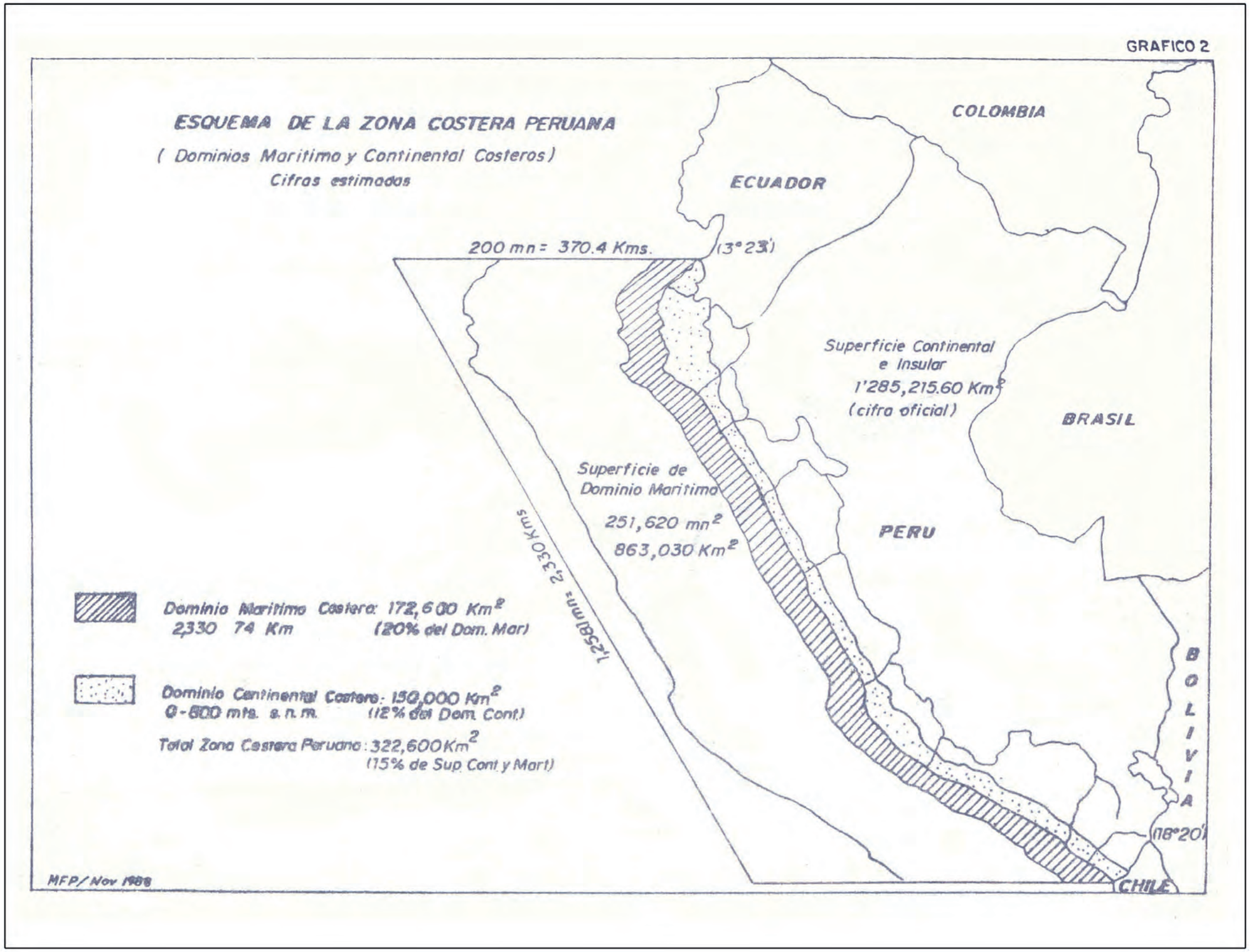
598 Reply, para. 4.117 and also see **Figures R-4.5 and R-4.6 to the Reply**, Vol. III, pp. 55 and 57.

599 Note of 17 February 2011 from the Director-General of the Institut Géographique National to the Ambassador of Chile to France, **Annex 35**, third paragraph.

600 Note of 27 January 2011 from the Director of the Flanders Marine Institute to the Secretary-General of the Department of Foreign Affairs of Belgium, forwarded to Chile, **Annex 34**, second paragraph.

**Figure 74**

Sketch-map of Peru's maritime dominion (1989)




Source: M. Flores Palomino, La Zona Costera del Perú: Un Ensayo de Interpretación y Proposición de su Organización para su Administración, 1989, DIAGRAM 2

where disputes over maritime boundaries cause friction in the exercise of various forms of jurisdiction by the States laying claim to a disputed area (including, in the past, areas claimed by both Chile and Argentina). Nor has there ever been any *modus vivendi* or similar arrangement reserving rights of either Party to any maritime area on the other side of the boundary parallel. As already noted, shortly before lodging its Application with the Court Peru confirmed that the *status quo*, i.e., the existing boundary parallel, would continue to apply[601].

3.44. Of signal importance, the boundary parallel has been applied by the Parties not only in respect of fisheries, but for all purposes. The Parties' respective authorities have treated encroachments of that line as infringements of their sovereignty. The sketch-map which was part of the Chilean Navy's Rules of Engagement in its version of the early 1990s (see **Figure 75**) clearly indicated the area to the south of the parallel which the Navy was tasked to defend.

3.45. While Chile has adduced a wealth of materials evidencing quiet possession and enjoyment, it is able to produce only Chilean materials and, of Peru's materials, what has been communicated to it or is accessible to it. In respect of such materials, Chile has been forthcoming, going so far as to produce an extract from its classified Rules of Engagement. The same cannot be said for Peru. There is a striking paucity of evidence on Peru's part relating to what Peru now calls the "*área en controversia*". Indeed, until Peru started preparing for this litigation in the early 2000s, there had been not a single Peruvian official paper asserting that no boundary was in place with Chile, or disputing Chile's entitlement to the area south of the parallel. The balance of the evidence between the Parties could not have been starker.

3.46. In its Reply, Peru declined to address the large majority of the practice invoked by Chile, arguing that "no amount of practice concerning fisheries policing can convert the line on which the zone of tolerance was based into a

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601 See para. 1.2 above.

permanent, all-purpose international maritime boundary" and that "[t]here is a difference between the use of a line in the sea for limited purposes and agreement upon a permanent international maritime boundary"[602]. But this is just rhetoric, which fails to account for two key facts. First, fishing and fisheries are by-and-large the most important everyday activities in the vicinity of the boundary. Second, the evidential record shows the Parties' exercise of jurisdiction in a range of matters with which a State would be entitled to deal in its EEZ[603]. Chile identified in Chapter III, Section 4 of the Counter-Memorial (at pages 214-239) the Parties' exercise of jurisdiction in respect of:

— monitoring and control of entry into the maritime zones;

— capture and prosecution of unauthorized foreign vessels;

— control of the airspace above the maritime zones; and

— scientific investigations.

3.47. In addition, the Navies of Chile and Peru discharge their responsibilities of defending and policing their respective State's waters, not solely a narrow 3M territorial sea but the entire 200M maritime zones of their respective State. Peru's capture of the Onassis fleet was among the early examples of Peru's exercise of jurisdiction through its Navy. For its part, as early as 1955 Chile established a co-ordinated plan for its Navy and the Air Force to patrol the 200M area declared under the Santiago Declaration[604].

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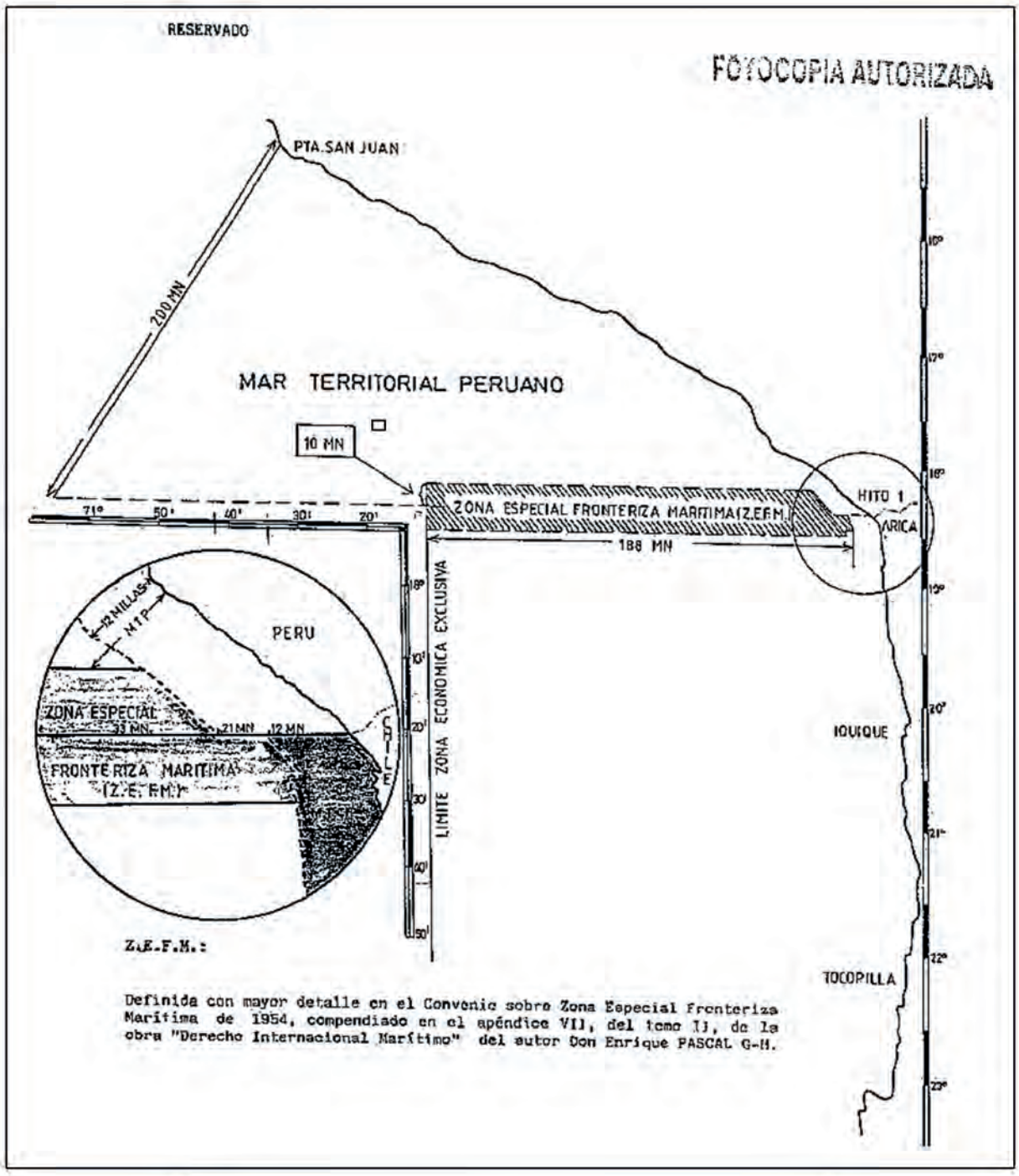
602 Reply, paras 4.25 and 4.26.

603 See UNCLOS, Arts 56(1) and 77(1).

604 *Plan Convenio Tripartito* by the Office of Chief of Staff of the First Naval Zone, 12 May 1955, **Annex 45**. This patrolling plan was prepared in order to ensure compliance with provisions set forth in the Tripartite Agreement [*Convenio Tripartito*] between Chile, Ecuador and Peru for the protection of maritime resources in Chile's 200M zone. The six CPPS agreements signed by the three States at the 1954 Inter-State Conference were annexed to the plan.

**Figure 75**

Extract from the Rules of Engagement of the Chilean Navy (1990s)




Legend

Límite Zona Económica Exclusiva: EEZ limit
Mar Territorial Peruano: Peruvian Territorial Sea
Zona Especial Fronteriza Maritima (Z.E.F.M.): Special Maritime Frontier Zone

Z.E.F.M.:
Defined in more detail in the Agreement relating to a Special Maritime Frontier Zone of 1954, contained in appendix VII, volume II, of the work *Derecho Internacional Marítimo* by Mr. Enrique Pascal G-H.

3.48. It is impossible to dismiss this extensive body of concordant practice spanning more than half a century and, signally, the absence of incidents between the two Navies, as being based on an *ad hoc*, temporally limited fisheries arrangement which is recorded nowhere.

3.49. In sum, Peru summarily skates over Chile's account of the extensive practice[605] without attempting to show the use of any different line between the Parties for any purpose, or explaining why Peru has agreed to observe the parallel line for more than half a century. Nor does Peru explain the difference between an all-purpose maritime boundary between the Parties and a line consensually applied to divide the zones in which each of the Parties has exercised jurisdiction in respect of many different subject-matters. In fact, there is no difference: a boundary, at sea as on land, is a line dividing the exercise of jurisdiction between States.

3.50. In this Section, Chile briefly recounts and supplements the practice of the two States and responds to Peru's criticism on the few factual points in Chile's evidential case which Peru chooses to address.

## B. Enforcement of the Maritime Boundary

### *1. Peru's Enforcement of the Boundary Line*

3.51. Peru contends that the boundary parallel, and the zone of tolerance on either side of the "maritime boundary" under the Agreement Relating to a Special Maritime Frontier Zone of 1954, were designed for the purpose of avoiding friction between Peruvian and Chilean fishermen[606]. While the incidents that had been experienced related to fishing vessels, the friction was

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605 Peru simply states at para. 4.24 of its Reply that "[i]t is not necessary to address the details of this practice — although Peru should not be taken to accept the accuracy of Chile's account".

606 See, e.g., Reply, para. 4.18.

between *States*, not fishermen. Nor is it fair to suggest, as Peru seems to do, that the boundary parallel was simply a line keeping the two States' fishermen apart.

3.52. The preamble of the 1954 Agreement acknowledged that "innocent and inadvertent violations of the maritime frontier between adjacent States occur frequently" and that it was "desirable to avoid the occurrence of such unintentional infringements" because the application of penalties in such cases would produce ill-feeling in the fishermen prosecuted and "friction between the countries concerned"[607]. The existence of the "maritime boundary" was confirmed, and a "special maritime frontier zone" was created along that maritime boundary because crossing that boundary would be an infringement of the sovereignty of the States parties.

3.53. Peru indeed treated crossings of the parallel by Chilean fishing vessels as illegal transgressions into "Peruvian waters", Peru's "territorial waters" or its "jurisdictional waters"[608]. These terms were used interchangeably, and all of them denote a plenitude of sovereignty and jurisdiction: the term "jurisdictional waters" is, on Peru's own case, a term referring to the entirety of its maritime zone[609]. And Peru sometimes attempted to defend its maritime frontier by resorting to forcible measures: this is a clear indication of the importance which Peru has attached to the line of the parallel as the limit of its "maritime dominion".

3.54. In the Counter-Memorial (paragraphs 3.16 *et seq*.), Chile described the pursuit of Chilean fishing vessels by a Peruvian Navy corvette, *Diez Canseco*. This was not the only such incident. On 23 July 1968, another Chilean fishing vessel, *Martín Pescador 2°*, was attacked by a Peruvian patrol boat, *Atico*, in the area to the north of the parallel boundary. The master of the Chilean vessel was

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607 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, preambular paragraphs.

608 See Counter-Memorial, para. 3.12.

609 See Reply, para. 24.

wounded by machine-gun fire[610]. No friction between *Martín Pescador 2°* and Peruvian fishermen was reported at the time. Rather, only Peru's Navy was involved. The following explanation in Peru's diplomatic note to Chile, which followed the event, reveals Peru's clear understanding that the line of the parallel (then in the process of being signalled by the alignment lighthouses) was Chile's "jurisdictional boundary" and the "dividing line" of the maritime zones of the two States:

> "1) As patrol boat 'Atico' became aware of the presence of twenty Chilean vessels carrying out activities in the area, it informed them that *they were beyond the jurisdictional boundary of their country*, a notice which was complied with by all the vessels except for 'Martín Pescador 2º', the master of which was reluctant to leave the Peruvian waters;
>
> 2) In view of this persistent attitude, the patrol boat shot with no other purpose than calling the attention of the vessel's crew and *prompting them to turn their course towards the dividing line*, which resulted in the vessel's master being accidentally injured.
>
> 3) The Peruvian Government does not conceal *its concern about the frequent violations of its territorial sea* committed by Chilean fishing vessels and expects that, while the installation of alignment marks envisaged by representatives of the two countries during the meeting of 26 April 1968 is being completed, the Chilean maritime authorities carry out greater surveillance so as to avoid such incursions occurring again."[611] (Emphasis added.)

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610 See Note No. 30 of 24 July 1968 from the Governor of Arica to the Minister of Interior of Chile, **Annex 51**.

611 Note No. 5-4-M/95 of 23 September 1968 from the Peruvian Ambassador to Chile to the Minister of Foreign Affairs of Chile, **Annex 20**.

3.55. Peru used stern and self-explanatory terms in the note, and ultimately the forcible action of its Navy speaks louder than words. Peru was ready and willing to defend, by use of force if necessary, the dividing line of the maritime zones of Chile and Peru. A press release by the Peruvian Navy in 1990 also confirmed that it was the Navy's standard procedure to fire warning shots at Chilean vessels illegally fishing in Peruvian waters[612]. Peru's current position that the line was necessary only for avoiding friction between fishermen of the two States cannot be sustained in light of Peru's own clear practice in defence of the boundary line.

*2. Chile's Capture of Peruvian Fishing Vessels to the South of the Parallel*

3.56. Chile also has enforced the maritime boundary by capturing Peruvian fishing vessels illegally engaging in fishing in the waters south of the "international political boundary"[613]. Chile has informed the Peruvian consul in Arica and the Harbour Master of Ilo in Peru of the details of each capture. Until 2004, Peru did not challenge Chile's position that transgressions had been assessed by reference to the "international political boundary", which both sides understood to be the parallel signalled by the alignment lighthouses. The Peruvian Consul General expressly acknowledged both the existence of a maritime boundary dividing the jurisdictional waters of the two States and the application of the Agreement Relating to a Special Maritime Frontier Zone of 1954 between them[614]. There were also in place procedures jointly adopted by

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612 Press Release No. 29-90 of 24 April 1990 issued by the Directorate of Information of the Peruvian Navy, **Annex 92**. This press release also acknowledged that two Chilean vessels escaped pursuit by a Peruvian patrol boat, crossing the "maritime frontier" into the Chilean waters.

613 See Counter-Memorial, paras 3.96-3.99 and **Figure 28 to the Counter-Memorial**, Vol. I, after p. 224.

614 Letter No. 8-10-B-C/0169-2000 of 14 April 2000 from the Consul General of Peru in Arica to the Harbour Master of Arica, **Annex 91 to the Counter-Memorial**; also see Counter-Memorial, para. 3.98.

Chile's Navy and Peru's Coastguard for escorting captured vessels to the boundary parallel[615].

3.57. As noted, Peru summarily dismisses this practice, claiming that the use of the parallel derives from an *ad hoc* arrangement between Chile and Peru which does not amount to acknowledgement of a maritime boundary[616]. Peru has not identified the source of that arrangement. Peru also fails to address the fact that the parallel of latitude which runs through the Special Maritime Frontier Zone was expressly confirmed by both Parties as the boundary dividing their jurisdictional waters[617]. Nor does Peru explain how it was content for Peruvian fishermen to be continually deprived of any right to fish in an area of 38,324 km² (roughly equal to the size of Belgium) to which Peru now says it has always been entitled.

3.58. In fact, Peruvian fishermen well understood the nature of the parallel. For example, formally recorded statements made by captains and crew of the vessels captured by Chile in 1984[618] (i.e., before the Bákula Memorandum) indicate their understanding that the line was "the Chilean international political boundary"[619] or the "Peru-Chile Boundary"[620] and that their vessels had crossed that line into Chilean waters[621].

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615 See Counter-Memorial, paras 3.100-3.105.

616 See Memorial, para. 4.105 and Reply, para. 4.25.

617 See Counter-Memorial, para. 3.98.

618 These vessels and the location of their captures are summarized in the Appendix to the Counter-Memorial. Chile explained at para. 3.95 of the Counter-Memorial that there is no general record-retention or reporting policy for routine matters such as capture of Peruvian fishing vessels in Chilean waters, and records were available for the period 1984 and 1994-2009.

619 Voluntary Declaration by Mr. Esteban Sacatuma Escalante (mechanic of the *Pocoma I*), 30 August 1984, **Annex 150**, second paragraph.

620 Voluntary Declaration by Mr. Leoncio Rodríguez Mori (Captain of the *Nicolas*), 31 July 1984, **Annex 149**, second paragraph; also see Voluntary Declaration by

## C. Monitoring of Entry into, and Exit from, the Maritime Zones of Peru and Chile by Domestic and Foreign Vessels

### *1. Peru*

3.59. Peru set forth procedures for monitoring entry of foreign vessels into its "maritime dominion" as early as 1972[622]. Peruvian legislation requires domestic and foreign vessels to give advance notice of entry into the Peruvian "maritime dominion" and also to report at the moment of entry into, and exit from, that maritime zone[623]. By 1987, this reporting obligation was set out in a Supreme Decree adopted by Peru's Directorate-General of Captaincies and Coastguard approving the Regulation of Captaincies and Maritime, Fluvial and Lacustrine Activities[624]. The reporting obligation was subsequently implemented in 1991, 1994 and 2001 through regulations approving the "system of information on position and security in the maritime dominion of Peru" (***SISPER***)[625]. SISPER is operated by the Directorate-General of Captaincies and

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Mr. Bernardo Ventocilla Espada (mechanic of the *Jessica*), 30 August 1984, **Annex 151**, second paragraph, referring to the "Chile-Peru boundary".

621 Voluntary Declaration by Mr. Bernardo Ventocilla Espada (mechanic of the *Jessica*), 31 July 1984, **Annex 148**, second paragraph.

622 Circular Note No. (Du)-2-6-GG/17 of 7 June 1972 from the Ministry of Foreign Affairs of Peru to all diplomatic missions accredited to Peru, **Annex 82 to the Counter-Memorial**; also see Counter-Memorial, para. 3.79.

623 See Counter-Memorial, paras 3.78-3.82.

624 Supreme Decree No. 002-87-MA of 11 June 1987 approving the Regulation of Captaincies and Maritime, Fluvial and Lacustrine Activities, **Annex 90**, Section A-040301.

625 Directorial Resolution No. 347-91-DC/MGP of 20 December 1991 of the Directorate-General of Captaincies and Coastguard of Peru, **Annex 178 to the Counter-Memorial**; Directorial Resolution No. 0313-94/DCG of 23 September 1994 of the Directorate-General of Captaincies and Coastguard of Peru, approving the System of Information on Position and Security in the Maritime Dominion of Peru, **Annex 180 to the Counter-Memorial**; Directorate of Hydrography and Navigation of the Navy, *Derrotero de la Costa del Perú, Vol. II*, 3rd edn, 2001, **Annex 193 to the Counter-Memorial**, p. 17, section 4.4.

Coastguard of Peru pursuant to the Regulation of Captaincies and Maritime, Fluvial and Lacustrine Activities[626].

3.60. Chile does not cavil with Peru's explanation that SISPER has been established to ensure that Peru's authorities are informed of the location of merchant ships, and more generally ships conducting other authorized activities including fishing (but not limited to it)[627]. However, Peru fails to mention that the system is intended to enable its authorities to track the locations of ships *within the confines of Peru's maritime dominion*[628]. It is for this reason that Peru requires each ship to report its location at the moment of entering into[629], and exiting from[630], the "maritime dominion" — in addition to regular reporting while navigating through that zone, or engaging in any activities in it. The importance accorded by Peru to the reporting system is such that vessels failing to comply with the obligation to report their position are subject to fines[631] which may reportedly reach up to USD10,000[632]. In fact, Peru has altogether failed to

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626 Supreme Decree No. 002-87-MA of 11 June 1987 approving the Regulation of Captaincies and Maritime, Fluvial and Lacustrine Activities, **Annex 90**, Section A-010201.

627 Reply, para. 4.31.

628 See, e.g., Directorial Resolution No. 0313-94/DCG of 23 September 1994 of the Directorate-General of Captaincies and Coastguard of Peru, approving the System of Information on Position and Security in the Maritime Dominion of Peru, **Annex 180 to the Counter-Memorial**, third preambular paragraph.

629 *Ibid*., Annex (3), First Case.

630 Directorial Resolution No. 0313-94/DCG of 23 September 1994 of the Directorate-General of Captaincies and Coastguard of Peru, approving the System of Information on Position and Security in the Maritime Dominion of Peru, **Annex 94**, Annex (4), Third Case.

631 Directorial Resolution No. 347-91-DC/MGP of 20 December 1991 of the Directorate-General of Captaincies and Coastguard of Peru, **Annex 93**, Art. 3; Directorial Resolution No. 0313-94/DCG of 23 September 1994 of the Directorate-General of Captaincies and Coastguard of Peru, approving the System of Information on Position and Security in the Maritime Dominion of Peru, **Annex 94**, Annex (1), Art. 4.

632 See, e.g., "Guidelines for Entering to Peruvian Waters published by Inchcape Fishing Services", available at <www.iss-shipping.com>, **Annex 153**, p. 1.

include these notification requirements upon entry and exit in its Reply and in the relevant Annex translating extracts from SISPER[633].

3.61. A system requiring notification at the precise moment of entry and exit into a maritime zone may function only because those applying the system, i.e., both the competent authorities of Peru and ships navigating its waters[634], know the perimeter of Peru's "maritime dominion". Therefore, the existence of SISPER is in itself evidence of Peru's conviction that its maritime dominion is fully delimited. The practical operation of SISPER relies on the fact that Peru has publicly announced the lateral boundaries of its maritime zone. Indeed, as has been explained at paragraphs 3.81-3.83 of the Counter-Memorial, since 1988 the southern limit of the reporting area is indicated the "jurisdictional parallel" of latitude of 18° 20' 08" S, practically corresponding to that of Hito No. 1[635].

3.62. The Peruvian Navy has taken measures to ensure that foreign vessels comply with the reporting requirements. In 2009, for example, the Harbour Master of Callao (a port near Lima) informed merchant shipping companies how to notify the Peruvian Navy of their "entry into Peruvian waters" pursuant to the relevant regulations[636]. This circular letter issued by the Peruvian Navy officer

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633 See Directorial Resolution No. 0313-94/DCG of 23 September 1994, approving the Peruvian Positioning and Security Information System issued by the Ministry of Defence, **Annex 13 to the Reply**.

634 See, e.g., "Guidelines for Entering to Peruvian Waters published by Inchcape Fishing Services", available at <www.iss-shipping.com>, **Annex 153**, p. 1.

635 See, e.g., Directorial Resolution No. 347-91-DC/MGP of 20 December 1991 of the Directorate-General of Captaincies and Coastguard of Peru, **Annex 178 to the Counter-Memorial**, Annex (3). The Directorial Resolution also contains model reports (see para. 7.25 below) with entry and exit points to the north and south of Peru's maritime dominion, but no point on the outer limit to the west.

636 Letter No. V.200-3762 of 27 November 2009 from the Captaincy of Callao to Merchant Shipping Companies, **Annex 100**. The letter refers to Directorial Resolution No. 0313-94/DCG of 23 September 1994 of the Directorate-General of Captaincies and Coastguard of Peru, approving the System of Information on Position and Security in the Maritime Dominion of Peru, **Annex 180 to the Counter-Memorial**, and Directorial Resolution No. 330-2005/DCG of 28 June

explains that some foreign vessels had been notifying entry "into Peruvian waters" incorrectly.

3.63. Indeed, vessels have been reporting entry into and exit from the "maritime dominion" of Peru well before 2009, and continue to do so today, at the parallel of 18° 20' S or 18° 21' S[637]. Appendix B summarizes recent records of reporting to the Peruvian authorities, including the name and nationality of the vessels, the date of reporting and the exact coordinates at which the vessels were entering or exiting the Peruvian waters[638].

*2. Chile*

3.64. Chile's Directorate of Security and Maritime Operations (***DIRSOMAR***) also receives requests from Peruvian vessels for authorization to traverse Chile's EEZ to reach fishing grounds in the high seas to the west of Chile's EEZ. Appendix C to this Rejoinder lists recent examples of such requests by Peruvian fishing vessels, in 2008 and 2009. When requiring authorization to traverse Chile's EEZ, Peruvian vessels informed Chile that they were entering "Chile's exclusive economic zone", "Chilean jurisdictional waters" or "Chilean waters"[639]. The latitude of the northern point of entry/exit from Chile's EEZ has consistently been the parallel 18º 20' S or 18º 21' S. When the Harbour Master of Ilo (Peru) and the Maritime Governor of Arica (Chile) discussed such transit in

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2005, which is stated to set out the email address to which foreign vessels should send information to the Peruvian authorities.

637 See the definition of Hito No. 1 at page xi above for the latitude of this boundary marker when referred to different datums. These two parallels closely correspond to that of Hito No. 1.

638 Messages from vessels have been sent to email addresses of the War Navy of Peru or the Directorate-General of Captaincies and Coastguard of Peru.

639 See transcripts of requests by Peruvian fishing vessels to cross Chile's EEZ to reach fishing grounds in the high seas, **Annex 155**.

2007, both sides acknowledged that it involved navigating through Chile's EEZ, not a disputed area[640].

## D. Geographic Scope of the Jurisdiction of the Naval and Maritime Authorities of Peru and Chile

3.65. In Chile and Peru alike, naval and maritime authorities assume responsibility for a wide range of issues, including maritime safety, enforcement of laws and regulations in general, protection of the marine environment, and suppression of illegal activities[641]. By virtue of regulations issued in 1987, the area of responsibility of Peru's Directorate-General of Captaincies and Coastguard is defined by reference to Maritime Districts which cover "[t]he waters of the maritime dominion up to 200 nautical miles"[642]. Six such Districts (numbered under Nos. 11, 12, 21, 22, 23 and 31) were established. As for Chile, Supreme Decree No. 991 of 1987 principally determines the jurisdiction of Maritime *Gobernaciones*[643], which covers "the territorial sea, the contiguous

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640 Minutes of the Meeting between the Harbour Master of Ilo and the Maritime Governor of Arica, 27 April 2007, **Annex 12**, section 3.

641 See Supreme Decree No. 002-87-MA of 11 June 1987 approving the Regulation of Captaincies and Maritime, Fluvial and Lacustrine Activities, **Annex 174 to the Counter-Memorial**, Chapter I, Section IV (Captaincies); **Annex 90**, Chapter I, Section II (Directorate-General of Captaincies and Coastguard); Chile's Decree with Force of Law No. 292 of 25 July 1953 approving the Organic Law of the Directorate-General of the Maritime Territory and Merchant Navy, **Annex 44**, Arts 3 and 15; and Chile's Decree with Force of Law No. 2222 of 21 May 1978 Substituting the Navigation Law, **Annex 57**, Art. 6.

642 Supreme Decree No. 002-87-MA of 11 June 1987 approving the Regulation of Captaincies and Maritime, Fluvial and Lacustrine Activities, **Annex 90**, Chapter II, Section II, Clause A-020201.

643 As indicated in the title of Supreme Decree No. 991 of 26 October 1987 Fixing the Jurisdiction of the Maritime *Gobernaciones* of the Republic and Establishing the Harbour Authorities and their Respective Jurisdictions, **Annex 37 to the Memorial**.

zone, the exclusive economic zone and the continental shelf belonging to the State of Chile."[644]

3.66. As illustrated on **Figure 76**, both in Chile and in Peru the geographic area of responsibility of most maritime authorities (i.e., the various Maritime Districts and *Gobernaciones*) project westwards, bounded by two parallels of latitude[645]. In fact, the use of parallels of latitude to divide areas of jurisdiction at sea has been the practice in Chile since the middle of the 19th century[646]. Despite both Parties' practice, Peru denies that the line dividing the respective areas of responsibility of the Chilean and Peruvian authorities has been determined. This Subsection addresses the argument put forward by Peru.

*1. Peru*

3.67. It is recalled that, under the Regulation of Captaincies and Maritime, Fluvial and Lacustrine Activities of 1987, Peru's southernmost Maritime District (No. 31) covered an area from "the provincial limit between Caraveli and Camaná (Parallel 16° 25' South) to the frontier boundary [*límite fronterizo*] between Peru and Chile"[647]. The provision defining the scope of Maritime District No. 31 is to be read as drawing the district's full perimeter on the sea[648].

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644 Supreme Decree No. 991 of 26 October 1987 Fixing the Jurisdiction of the Maritime *Gobernaciones* of the Republic and Establishing the Harbour Authorities and their Respective Jurisdictions, **Annex 37 to the Memorial**, Art. 2.

645 The exception to this are the Maritime *Gobernaciones* covering areas of jurisdiction to the south of the parallel 40º 45' 35" S.

646 See Law of 30 August 1848 on the Division of the Territory of the Maritime *Gobernaciones*, **Annex 42**, Art. 2. Also see Supreme Decree No. 844 of 19 May 1945 on the Division of Chile's First, Second and Third Naval Zones, **Annex 43**, Art. 2.

647 Supreme Decree No. 002-87-MA of 11 June 1987 approving the Regulation of Captaincies and Maritime, Fluvial and Lacustrine Activities, **Annex 174 to the Counter-Memorial**, Chapter II, Section III, Clause A-020301.

648 See further Counter-Memorial, paras 3.72-3.75.

3.68. However, Peru argues that the "frontier boundary" is a reference to the land boundary, on the footing that the Regulation "defines the limits of the districts in terms of the stretch of coastline that each district covers"[649]. Peru's reading is puzzling. The Regulation on any possible view sets forth lines in the water to apportion areas of responsibility among maritime authorities, i.e., defined zones of control. The northern limit of Maritime District No. 31 is defined as a parallel of latitude (16º 25' S), as is in fact every limit of a Maritime District in the 1987 Regulation. The southern limit of Maritime District No. 31 is defined as "the frontier boundary [*límite fronterizo*] with Chile" — just like the northern boundary of Maritime District No. 11 is defined as the "maritime frontier [*frontera marítima*] with Ecuador". These verbal descriptors are used in the Regulation because the boundaries with both Chile and Ecuador are constituted by parallels of latitude. The fact is simply that the Regulation conceives, rightly, the projection of the relevant "stretch of coastline" not to extend to the south of the Hito No. 1 parallel. No other reading is tenable in light of the object and purpose of the Regulation, its actual wording, and the manner in which the limits of each of Peru's Maritime Districts are there set out, following parallels of latitude. Chile respectfully submits that Peru's present interpretation of this Regulation is manifestly incorrect and that it is thus for the Court to adopt the proper interpretation[650].

3.69. Peru also contends, as a second-line defence, that it had already reserved its position in 1986, in the Bákula Memorandum, and that the definition of Maritime District No. 31 could not refer to an international maritime boundary. Peru goes on to say that by confining its law-enforcement actions to the area north of the parallel, Peru only took reasonable steps to maintain maritime policing in a non-provocative manner and avoid confrontation with

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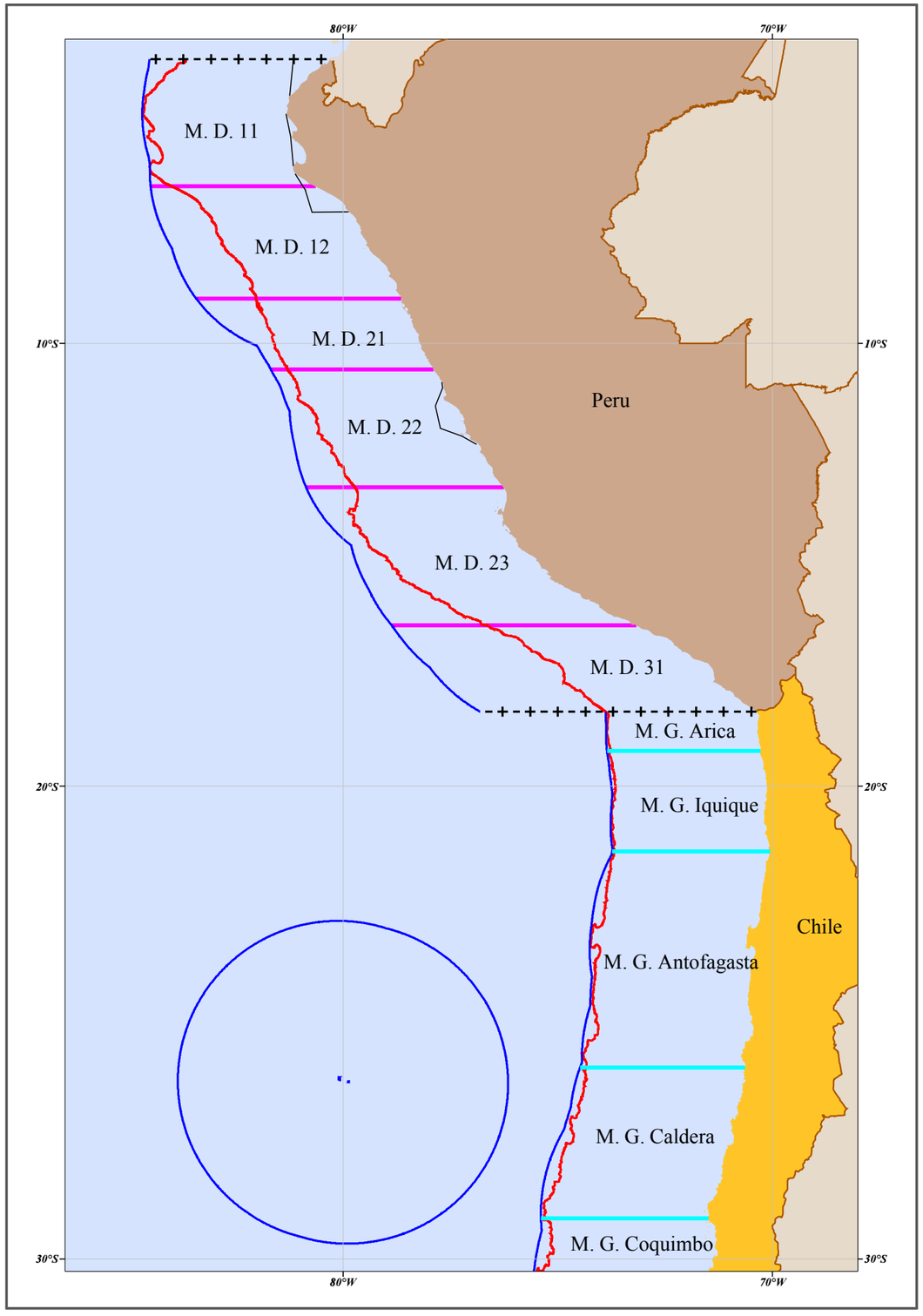
649 Reply, para. 4.32.

650 See para. 3.8 above and *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), I.C.J. Judgment, 30 November 2010*, para. 70.

Maritime Districts of Peru and Maritime *Gobernaciones* of Chile




+-+-+-+-+ Parallels of the international maritime boundary

200M limits

Limits dividing the maritime *gobernaciones* of Chile

Limits dividing the maritime districts of Peru

*Tracé parallèle* of mainland coast projected 200M along parallels of latitude (ignores straight baselines)

Peru's declared straight baselines published in Peruvian Law No. 28621 of 3 November 2005 as amended by Law No. 29687 of 19 May 2011

M. D. Maritime District

M. G. Maritime *Gobernación*

Sources:

Peru's Supreme Decree No. 002-87-MA of 11 June 1987
Chile's Supreme Decree No. 991 of October 1987

*Datum: WGS84 Projection: Mercator*

0 50 100 150 200 M

*Prepared for the Ministry of Foreign Affairs, Chile, by UKHO Law of the Sea Consultancy*

Chile[651]. Peru's argument that the Bákula Memorandum was a blanket pre-emptive reservation fails for the simple reason that, as will be demonstrated in Section 6 below, Peru acknowledged in the very same memorandum that a maritime boundary was already in place, which it wished to renegotiate[652]. In any event, if Peru's purpose was to avoid confrontation one would have expected it to communicate this to Chile formally, reserving any entitlement Peru thought it had to waters to the south of the boundary parallel. Peru did no such thing. The reason is that it did not believe it had any such entitlement.

*2. Chile*

3.70. Under Article 1 of Supreme Decree No. 991 of 1987[653], the jurisdiction of the Maritime *Gobernación* of Arica is defined as the area from the Chile-Peru international political boundary [*límite político internacional*] in the north to the parallel of 19° 13' 00" S (Punta Camarones) some 50M to the south. Peru claimed in its Memorial that there was "no indication of what, in juridical terms, this 'international political limit' was, or the legal basis for it, or of where it was thought to be located."[654] In the Counter-Memorial Chile pointed out that the term "international political boundary" is commonly used to refer to international boundaries and that such was the meaning of this term when used by the naval authorities of Peru and Chile in their bilateral meetings[655]. In the Reply, Peru now says that it was simply the land border with Peru[656]. Peru seems to draw this conclusion from the fact that Chile's Decree 991 uses the term "maritime boundary" when referring to the boundary with Argentina and the term "international political boundary" when referring to the boundary with

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651 See Reply, para. 4.33.

652 See Counter-Memorial, para. 1.39; Rejoinder, paras 3.14-3.29.

653 Supreme Decree No. 991 of 26 October 1987, Fixing the Jurisdiction of the Maritime *Gobernaciones* of the Republic and Establishing the Harbour Authorities and their Respective Jurisdictions, **Annex 37 to the Memorial**.

654 Memorial, para. 4.134.

655 See Counter-Memorial, para. 3.64.

656 See Reply, para. 4.92.

Peru[657]. The distinction Peru seeks to draw is specious. Records of meetings between the naval authorities of Argentina and Chile show that the maritime boundary of the two countries was referred to both as the "international maritime boundary" and as the "international political boundary" without distinction[658].

3.71. Chile has also explained that Peru was fully aware of the meaning and precise location of the "international political boundary" from Chilean official communications[659]. The maritime authorities and Foreign Ministry of Peru clearly understood that the international political boundary followed the Hito No. 1 parallel signalled by the pair of alignment lighthouses[660].

3.72. Peru suggests that the alleged difference in nomenclature for the northern and southern maritime boundaries indicates Chile's understanding that the parallel of Hito No. 1 in the north is less than an all-purpose maritime boundary[661]. Chile does not deny that these two boundary lines have on occasion been described in different terms and with a varying degree of detail. However, the differences hardly support the inference Peru asks the Court to draw.

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657 Reply, para. 4.92.

658 See, e.g., the Minutes of the XVII Meeting of the Southern Integration Committee between Chilean and Argentinean maritime authorities of 18 and 19 April 2007, where under the heading "Placing of fishing equipment in the Beagle channel on the navigation channel [of the] International Maritime Boundary", Chile and Argentina referred to the "procedures and seizures in the LPI [*límite político internacional*]", **Annex 11**; also see Minutes of the First Meeting of Maritime Authorities of the Beagle Channel of 24 March 2006, where Argentina and Chile agreed to "coordination. . .during situations created by extractive fishing in the vicinity of the Beagle Channel maritime boundary [*límite político internacional*]", **Annex 9**; and Minutes of the Third Meeting of the Maritime Authorities of the Beagle Channel of 3 April 2007, where the Chilean maritime authority was recorded as having announced a prohibition on Chilean vessels fishing at a distance of 1 cable (0.1M) "from the L.P.I. [*límite político internacional*]", **Annex 10**.

659 See Counter-Memorial, paras 3.63-3.65.

660 See Fax No. 024 of 25 February 1999 from the Deputy Harbour Master of Arica to the Consul of Peru in Arica, **Annex 88 to the Counter-Memorial**; also see Counter-Memorial, para. 3.64.

661 See Reply, paras 4.100-4.105.

3.73. Peru relies on Chile's Decree No. 704 of 1990. This relates to the organization of search and rescue operations by the Chilean Navy, and provides that the search and rescue area includes "all the waters under national maritime jurisdiction and those of the Pacific Ocean". As Peru rightly points out, this Decree describes the northern limit of that area as "the parallel 18° 20' 08" South" and the south-eastern limit by citing the Peace Treaty with Argentina[662]. The fact that for the parallel to the North no agreement is specifically cited is in Peru's submission a meaningful absence. On closer examination, it is no such thing.

3.74. Both of these lines in Decree No. 704 constitute parts of the outer limit of the search and rescue area covering the waters under national jurisdiction, and both of them correspond to Chile's maritime boundaries. The description of the south-eastern line, namely "the Line that joins together points A, B, C, D, E and F of Chart No. 1 of the Treaty of Peace and Friendship with the Argentine Republic, enacted by Supreme Decree (Ministry of Foreign Affairs) No. 401 of 1985"[663] is merely a simpler way of describing each of the five segments of the Chile-Argentina boundary, rather than using a list of six pairs of coordinates. The Peace Treaty contains a chart agreed with Argentina and depicting that boundary line, which is also an easy reference to the line. By contrast, the boundary with Peru is a parallel of latitude and no further clarification was required.

## E. PERU'S AIRSPACE IS BOUNDED BY TWO PARALLELS, TO THE NORTH AND THE SOUTH

3.75. As Chile has already explained, Peru uses the parallels at the points where its land boundaries to the north and south meet the sea as the lateral limits

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662 Decree No. 704 of 29 October 1990, Amending Decree No. 1,190 of 1976 that Organizes the Maritime Search and Rescue Service of the Navy of Chile, **Annex 26 to the Reply**, Art. 1.

663 *Ibid*.

of the airspace above its maritime dominion[664]. In response, Peru alleges that Chile sought to assimilate the Flight Information Region (***FIR***) of Lima to Peru's airspace in an attempt to show that Peru's airspace is bounded by parallels[665]. But Chile sought to do no such thing. Chile accepts that Peru's airspace and FIR Lima are different in juridical nature and in their spatial extent, and a discussion of FIR Lima is to be found separately, at paragraphs 3.80 *et seq*. below.

3.76. For the sake of clarity, the position is as follows. As Peru claims "exclusive sovereignty over the air space which covers its territory and jurisdictional waters within a range of two hundred miles"[666], the perimeter of Peru's airspace coincides with that of its "maritime dominion" at sea. Peru regulates air traffic within its vast airspace by authorizing and monitoring entry into and exit from it. In the "Explanatory Report [*Exposición de Motivos*]" with which the Peruvian Minister of Aeronautics submitted the bill on Civil Aeronautics to Peru's Congress in 1963, the Minister described Peru's intention to control air traffic as follows:

> "In Title I, related to air traffic, the principles of sovereignty concerning airspace and their relations with the principle of State sovereignty, are established. . .In accordance with doctrine and with the international principles established by the Chicago Convention, national rules which stem from *the State's right to regulate air traffic within the area limited by the aerial frontiers* are enacted, and the rights of transit of aircraft overflying [the frontier] and rules relative to the establishment of customs

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664 See Counter-Memorial, paras 3.109-3.114.

665 See Reply, para. 4.40.

666 Law No. 15720 of 11 November 1965: Law on Civil Aeronautics, **Annex 12 to the Memorial**, Art. 2; Law No. 27261 of 9 May 2000: Law on Civil Aeronautics, **Annex 185 to the Counter-Memorial**, Art. 3.

for international air traffic are determined."[667] (Emphasis added.)

3.77. Peru requires prior authorization for entry into and exit from Peru's *airspace*[668], and the points of entry and exit are on the parallel of 18° 21' 00" S[669] in the south. An example of a Peruvian authorization to a Chilean Air Force aircraft was provided as **Figure 30** of the Counter-Memorial[670]. As is clear from the document, authorization was granted for "overflight [of] Peruvian territory [*sobrevuelo territorio peruano*]", with an indication of the entry and exit points. Pursuant to the Law on Civil Aeronautics, authorization was granted, not for flying through FIR Lima (nor does the authorization say so), but rather through Peru's "territory", i.e., in Peru's airspace. The use of FIR code-names was simply a convenient way of identifying the entry and exit points.

## F. The Lines Dividing Various Zones under the IMO and ICAO Régimes Have Been Aligned with the Maritime Boundary

3.78. Chile and Peru are responsible for ensuring the safety of navigation at sea and in the air in the areas west of their respective continental territories. The relevant responsibilities are exercised pursuant to multilateral agreements and arrangements under the auspices of the International Maritime Organization (***IMO***)[671] and the International Civil Aviation Organization (***ICAO***). Such zones include (a) maritime search and rescue (***SAR***) regions; (b) areas established under an IMO Assembly resolution for the purpose of coordinating the

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667 Explanatory Report of 5 December 1963, signed by the Minister of Aeronautics of Peru, **Annex 83**, p. 2.

668 See Law No. 27261 of 9 May 2000: Law on Civil Aeronautics, **Annex 185 to the Counter-Memorial**, Art. 21.

669 See Counter-Memorial, paras 3.110-3.114.

670 Fax message of 15 January 2008 from the Chief of the Liaison and Protocol Department of the Air Force of Peru to the Directorate of the Air and Space Affairs of the Ministry of Foreign Affairs of Peru and to the Air Force Attaché of the Chilean Embassy in Peru, **Annex 110 to the Counter-Memorial**.

671 Reference to IMO in this Rejoinder includes reference to its predecessor body, the Inter-Governmental Maritime Consultative Organization.

transmission of radio navigational warnings (each referred to as a "NAVAREA" in the resolution)[672]; and (c) FIRs established under Annex 11 to the 1944 Chicago Convention.

3.79. Peru says that the division of zones adopted for particular issues is separate from the delimitation of maritime zones[673]. As a statement of a general rule, that is correct. However, the Parties' conduct in respect of all three special zones concerned is consistent, and indicates their acknowledgment that these zones were divided by a line following a parallel of latitude, on the understanding that the maritime and aerial boundaries between the two also followed a parallel of latitude. The consistency is significant because it is predicated on explicit acknowledgements of a boundary line following a parallel of latitude, which boundary line the Parties wished also to adopt in dividing SAR regions, NAVAREAs, and FIRs.

*1. Division of the FIRs of Chile and Peru*

3.80. In 1962 the line dividing the adjacent FIRs of Chile and Peru was changed by the ICAO Council to the current line, namely the parallel of 18° 21' S[674]. The change was initiated by Peru, not Chile. Peru submitted a working paper depicting the structure of the air-route network in Peru's airspace. As explained in the Counter-Memorial, under the Chicago Convention, if the parallel of 18° 21' S were not the boundary line between the airspaces of Chile and Peru, or that boundary had not been agreed upon, this would have meant that Chile might be controlling part of Peru's airspace; and accordingly the Parties would have been required by the Chicago Convention to enter into an agreement regarding Chile's provision of services in Peruvian airspace south of parallel

672 Plan for the Establishment of a World-Wide Navigational Warning Service, adopted by IMO Assembly Resolution A. 381(X), 14 November 1977, **Annex 128**.

673 See Memorial, p. 131, footnote 197.

674 See Counter-Memorial, para. 3.114.

18° 21' S[675]. In fact, neither Peru nor Chile considered it necessary to enter into such an agreement. They did not do so because south of parallel 18° 21' S Chile was not providing services in Peru's airspace. This is the point Peru is required to answer, but it remains silent on it.

3.81. In fact, shortly after the change, in 1962, to the current dividing line between the Parties' adjacent FIRs, there was confirmation of the motivation for this change. In 1967, Chile issued a Decree changing the northern limit of the aerial SAR region to 18° 21' S so as to align it with that of the northernmost FIR of Chile (FIR Antofagasta). The preamble of the Decree records Chile's understanding that the line dividing the adjacent FIRs of Chile and Peru was modified by ICAO so as to coincide with the maritime boundary, and also that the modification was initiated by Peru[676]. The Decree was published, but Peru did not react to it.

*2. Division of the NAVAREAs of Chile and Peru*

3.82. When the World-Wide Navigational Warning Service was established at the initiative of IMCO and IHO, the initial plan was for one of the States in the South-East Pacific to take responsibility for the area south of the Equator and east of meridian 135° W[677]. Both Chile and Peru expressed their willingness to assume responsibility in the area. It was eventually agreed in 1975 to divide the area into northern and southern segments, with Chile assuming responsibility for the southern segment. This was agreed among Chile, Peru, and Ecuador and then endorsed by the IMCO. The report of the IMCO working group recorded the three States' agreement as follows:

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675 See Annex 11 to the Chicago Convention and Counter-Memorial, p. 233, footnote 677.

676 See Decree No. 57 of 17 February 1967 amending Regulation Series A No. 25 "Organ[s] and Functioning of the Search and Rescue Service (SAR Service)", **Annex 48**, first preambular paragraph.

677 See Report of the *Ad hoc* Joint IHO/IMCO Committee on Promulgation of Radio Navigational Warnings, 1st session, document PRNW I/7, 31 May 1973, **Annex 123**.

> "The Working Group was informed of the agreement reached by Chile, Ecuador and Peru to divide the Area XV into two *at the latitude of the border of Chile and Peru* and that Chile would take the responsibility of the Area Co-ordinator for the Southern Area. Ecuador and Peru would continue consultations to decide on the Area Co-ordinator for the Northern Area and to make arrangements for the promulgation of navigational warnings."[678] (Emphasis added.)

3.83. The wording acknowledges that the Parties' "border" at sea is a "latitude", that is to say a parallel of latitude. The division of the Chilean and Peruvian NAVAREAs (both extending westwards to 120° W, i.e., some 2,800M from Ilo and Arica) along a line of parallel is shown on the sketch-map attached to the final text of the IMO Plan for the Establishment of a World-Wide Navigational Warning Service (reproduced as **Figure 77**). Peru now assumes responsibility in a corridor of the South-East Pacific, projecting due west from its coastline.

3.84. It is noted for completeness that the final text of the IMO Guidance Document contains a standard disclaimer that "[t]he delimitation of such [NAVAREAs] is not related to and shall not prejudice the delimitation of any boundaries between States"[679]. This is of no moment. When the Parties agreed to divide their NAVAREAs, this was an unqualified, unreserved agreement referring explicitly to the "latitude of the border of Chile and Peru". Chile, Ecuador and Peru reached a specific agreement, implementing an agreed boundary line. They had no reservation or qualification to make, because the

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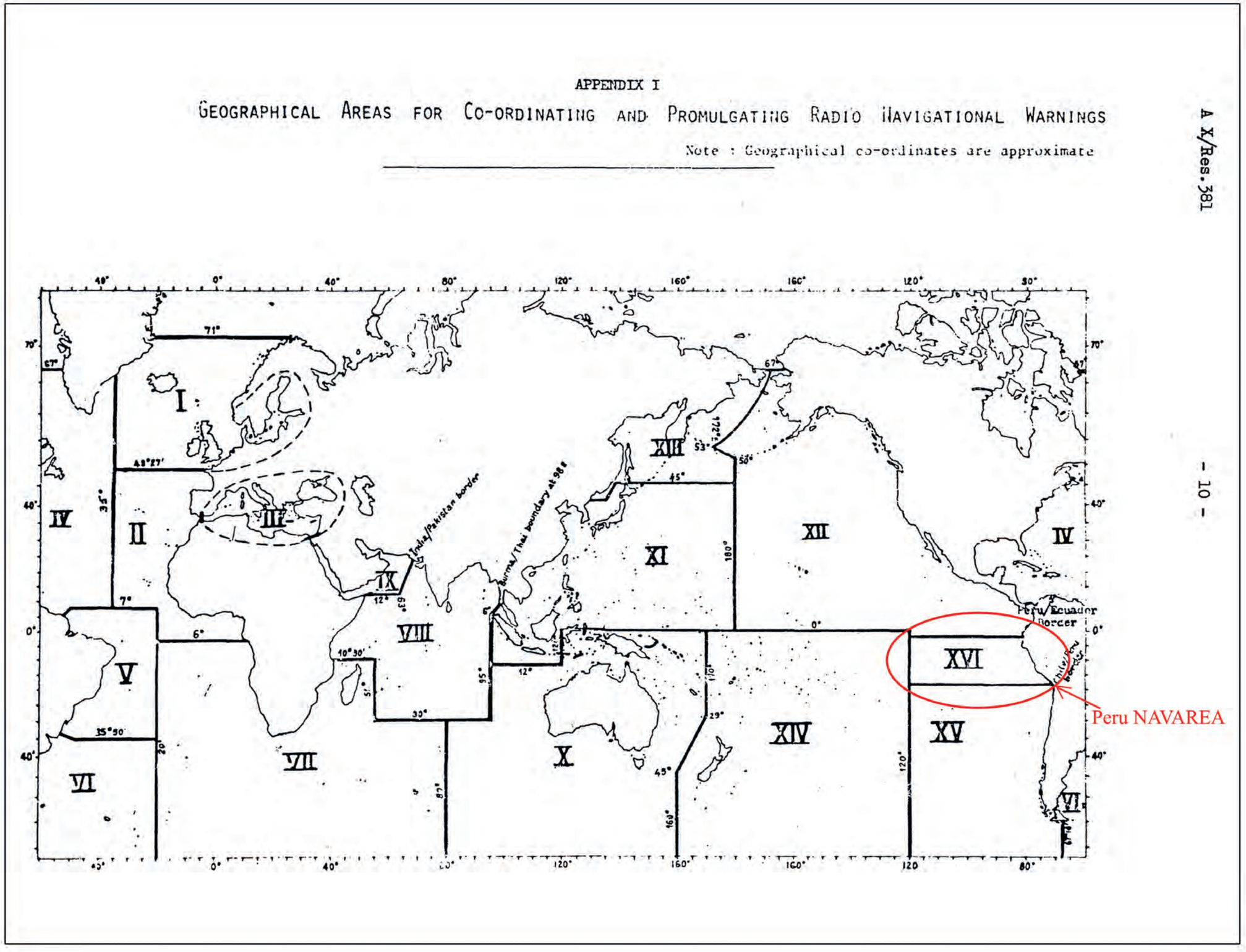
678 IMCO, Sub-Committee on Radiocommunications — 15th session, Agenda item 7: *International Co-ordination of Promulgating Navigational Warnings to Shipping — Communication Aspects: Report of the Working Group on Radio Navigational Warnings*, document COM XV/WP.11, 18 September 1975, **Annex 125**, p. 3, para. 16.

679 See the definition of "Area" in Plan for the Establishment of a World-Wide Navigational Warning Service, adopted by IMO Assembly Resolution A. 381(X), 14 November 1977, **Annex 128**, para. 2 (Definitions).

**Figure 77**

Sketch-map showing the division of NAVAREAs (1977)




Source: IMO Assembly, Resolution No. S.381(X), Plan for the Establishment of a World-Wide Navigational Warning System, adopted on 14 November 1977, Appendix 1

boundary line was an agreed one and in place at that stage for 25 years already. In any event, this disclaimer was first mentioned in the near-final draft of the Plan for the Establishment of a World-Wide Navigational Warning Service in November 1977[680], well after the Parties' understanding in 1975.

*3. Division of the Maritime SAR Regions of Chile and Peru*

3.85. Before the International Convention on Maritime Search and Rescue was concluded in 1979 and States began to establish their SAR regions under that Convention, Chile had established its own maritime SAR regions in 1976. Four such regions were created. The northernmost region was bounded in the north by the parallel of "18° 20'8 S", and this line was also described in the relevant Decree as the "Northern Boundary parallel"[681]. Chile then notified the IMO that it had established SAR services "in accordance with national laws and regulations"[682]. Peru lodged no protest with either the IMO or Chile. The current SAR regions of Chile and Peru are divided practically by the parallel of Hito No. 1[683].

## G. CONTROL OF EXPLOITATION OF LIVING RESOURCES BY PERU AND CHILE IN THEIR RESPECTIVE MARITIME ZONES

3.86. One method for Peru and Chile to exploit and at the same time protect living resources within their respective maritime zones is to control fishing

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680 See IMCO, Assembly — 10th session, Committee II, *Report of Committee II to the Plenary*, document A X/C.2/2, 14 November 1977, **Annex 127**, p. 3, para. 5(14).

681 Decree No. 1,190 of 29 December 1976 on the Organization of the Maritime Search and Rescue Service of the Chilean Navy, **Annex 132 to the Counter-Memorial**, Title II, para. 1. Also see Counter-Memorial, para. 3.59.

682 IMCO, Group of Experts on Search and Rescue — 5th session: *Report of the Maritime Safety Committee*, document SAR V/6, 15 June 1977, **Annex 126**, para. 29.

683 See IMO, Global SAR Plan Containing Information on the Current Availability of SAR Services, document SAR.8/Circ.1/Corr.2, 22 March 2005 (Chile, "18° 21' 03" S"), **Annex 133**, Annex 2, p. 40 and document SAR.8/Circ.1/Corr.4, 21 April 2006 (Peru, "18° 21'.00 S"), **Annex 135**, Annex 2, p. 38.

activities through permits[684]. Chile, Ecuador and Peru signed a Regulation in 1955, under the auspices of the CPPS, which confirmed the rule that a permit for the exploitation of such resources must be obtained from the State in the maritime zone of which the activities were to take place[685]. As already noted, this requirement was issued on the footing that there were distinct national maritime zones in accordance with a prior agreed delimitation[686]. In Chile and Peru, several legislative and regulatory texts govern the issuance of fishing permits to foreign vessels. These texts indicate that both Peru and Chile have regulated fishing activities on the understanding that their respective, separate maritime zones were established by the 1952 Santiago Declaration.

*1. Peru*

3.87. Peru's Supreme Decree No. 22 of 1956 requires foreign vessels to obtain fishing permits from Peru before engaging in fishing within Peru's "jurisdictional waters"[687]. One such permit issued to four fishing vessels registered in the United States of America, officially communicated to Chile by Peru, indicates that they were permitted to fish in the "Maritime Zone [*Zona Marítima*]. . .established in the Agreements of Santiago of 1952, and Lima of 1954"[688]. This was issued shortly after the 1955 Supreme Resolution, which confirmed that Peru's maritime zone was limited by two parallels to the north and south[689].

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684 See UNCLOS, Arts 56(a), 61 and 62.

685 See Regulation of Permits for the Exploitation of the Resources of the South Pacific, signed at Quito on 16 September 1955, **Annex 5 to the Counter-Memorial**, Arts IV and VI.

686 See Counter-Memorial, para. 3.129.

687 Supreme Decree of 5 January 1956: Regulation for Fishing Permits to Foreign Vessels, **Annex 82**, Art. 1.

688 Ministerial Resolution No. 478 of 9 March 1955, **Annex 77**, first preambular paragraph.

689 See Counter-Memorial, paras 3.50-3.52.

3.88. The 1956 legislation also requires fishing vessels with the requisite permit to communicate to the Peruvian authorities "the dates on which they enter [into] and exit from Peruvian waters"[690]. Again, if the outer and lateral limits of Peru's maritime zone had not been known, this requirement would have been a meaningless one to stipulate.

*2. Chile*

3.89. Peru cites Chile's legislation on the issuance of permits to foreign vessels[691], and points out that the legislation does not make reference to the Santiago Declaration as the maritime delimitation agreement[692]. The argument seems to be that unless every law or regulation explicitly refers to the Santiago Declaration as having fully delimited Chile's maritime zone with Peru, one must conclude that Chile does not consider that a maritime boundary exists[693]. This is illogical, and wrong as a matter of common experience. Legislation and regulations which are referable to, or are based on, a defined maritime zone need not refer to the boundary delimitation text. Such laws and regulations are concerned with specific implementation measures, and need not cite every antecedent act.

3.90. In any event Peru's argument fails on the facts. Some of the relevant regulations do specifically cite the 1952 Santiago Declaration as the basis for Chile's maritime zone. As was noted by Peru itself, Chile's Decree No. 332 of 1963 granted the Ministry of Agriculture authority to issue fishing permits to foreign-flag vessels within Chile's "200-mile zone established by the Declaration on the Maritime Zone of 18 August 1952"[694]. Similarly, Chile's General

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690 Supreme Decree of 5 January 1956: Regulation for Fishing Permits to Foreign Vessels, **Annex 82**, Art. 12.

691 See Counter-Memorial, paras 3.58-3.68.

692 See Reply, para. 4.91.

693 *Ibid*., paras 4.93-4.95.

694 *Ibid*., para. 4.94.

Regulation of Order, Security and Discipline in the Ships and Coastline of the Republic, as amended in 1978, provided that "any vessel navigating to a national port or entering, in transit, into the 200-mile National Maritime Zone established in the Declaration on the Maritime Zone of 1952, shall communicate its position daily at 08:00 and 20:00, and shall also communicate its course, speed in knots and port of call."[695]

3.91. Chile's Decree No. 130 of 1959, referred to by Peru[696], implements the Regulation of Permits for the Exploitation of the Resources of the South Pacific, signed in 1955 under the auspices of the CPPS in respect of fishing activities[697]. This CPPS Regulation concerns exploitation of resources in the "maritime zone of Chile, Ecuador or Peru"[698]. This is the 200M maritime zone under the Santiago Declaration, which forms the basis of the entire CPPS system[699]. Decree No. 130 implements this Regulation, and controls fishing activities by foreign vessels in Chile's "territorial waters [*aguas territoriales*]"[700].

3.92. In implementation of the foregoing regulations, permits issued by Chile to domestic fishing companies covered areas within Chile's maritime zone up to the "parallel 18º 20' L.S."[701] or the "parallel 18° 21' L.S."[702]. Other fishing

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695 Decree No. 441 of 8 July 1978: Amendment to the General Regulation of Order, Security and Discipline on Vessels and the Coast of the Republic, **Annex 58**, Art. 1.

696 Decree No. 130 of 11 February 1959: Regulation on Permits for Fishing by Foreign Vessels in Chilean Territorial Waters, **Annex 117 to the Counter-Memorial**; Reply, para. 4.93.

697 Decree No. 130 of 11 February 1959: Regulation on Permits for Fishing by Foreign Vessels in Chilean Territorial Waters, **Annex 117 to the Counter-Memorial**, first preambular recital.

698 Regulation of Permits for the Exploitation of the Resources of the South Pacific, signed at Quito on 16 September 1955, **Annex 5 to the Counter-Memorial**, Art. 1.

699 See Counter-Memorial, para. 3.130.

700 Decree No. 130 of 11 February 1959: Regulation on Permits for Fishing by Foreign Vessels in Chilean Territorial Waters, **Annex 117 to the Counter-Memorial**, Art. 1.

701 See Resolution No. 311 of 7 May 1993 by the Under-Secretariat of Fisheries of Chile, **Annex 67**, para. 1.

permits referred to areas located between 18º 20' and another parallel of latitude to the south, the length of the permitted area being determined by the Under-Secretariat of Fisheries on a case-by-case basis[703].

3.93. Chile's control of fishing activities does not end at the issuance of fishing permits. Pursuant to Chile's Fisheries Law, which applies to extractive fishing activities undertaken in Chile's EEZ[704], owners of fishing vessels are required to report to Chile's National Service for Fisheries (***SERNAPESCA***)[705]. For the purposes of monitoring fishing within Chile's EEZ, SERNAPESCA defined 44 areas at sea which serve as the basis for ship owners to report the location where they carry out fishing activities. The two northernmost areas defined by SERNAPESCA end at the parallel of 18º 21' S, as illustrated on **Figure 78**[706].

## H. Scientific Research in Waters South of the Maritime Boundary

3.94. In its Reply, Peru does not dispute the fact that (a) Chile has authorized research missions in Chile's maritime zones, including the maritime spaces now claimed by Peru[707]; and (b) in the CPPS-coordinated study of the periodic climatic phenomenon "El Niño", each CPPS Member State has

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[702] See Resolution No. 1412 of 31 December 1992 by the Under-Secretariat of Fisheries of Chile, **Annex 65**, para. 1; Resolution No. 1 of 8 January 1993 by the Under-Secretariat of Fisheries of Chile, **Annex 66**, para. 1.

[703] See the following Resolutions by the Under-Secretariat of Fisheries of Chile: No. 350 of 10 November 1971, **Annex 53**; No. 397 of 9 October 1980, **Annex 59**; No. 402 of 13 October 1980, **Annex 60**; No. 403 of 13 October 1980, **Annex 61**; No. 450 of 17 November 1980, **Annex 62**; No. 512 of 30 December 1980, **Annex 63**.

[704] See Law No. 18,892 (as amended), General Law on Fisheries and Aquaculture, consolidated text published in Decree No. 430 of 21 January 1992, **Annex 64**, Art. 1.

[705] *Ibid*., Arts 63 and 64; also see Supreme Decree No. 464 of 31 July 1995, **Annex 69**, Art. 6.

[706] See Industrial Unload Form DI-01 issued by Chile's National Service for Fisheries, **Annex 75**.

[707] See Counter-Memorial, paras 3.115-3.117.

conducted research within the maritime area under its jurisdiction[708]. Peru acknowledges the existence of three parallels of latitude dividing the respective areas of scientific research of the Member States, including the parallel which divides the Chilean and Peruvian areas. Peru suggests that the line was agreed specifically for scientific research purposes but nothing more[709]. The argument is difficult to credit for a number of reasons.

3.95. Exercise of jurisdiction over marine scientific research is an aspect of the coastal State's rights in its EEZ[710]. Peru did not raise any objection to Chile's having authorized research projects to the south of the boundary parallel, nor did Peru claim that it, rather than Chile, should be the authorizing State. Peru was well aware of Chile's authorizations, in particular for research conducted by vessels covering both Peruvian and Chilean zones on the same voyage[711].

3.96. In fact, Chile's practice of authorizing scientific research projects in its maritime zone spans a period longer than the last 15 years which the examples in paragraphs 3.115-3.117 of the Counter-Memorial cover. For example, in 1977, the Hydrographic Office of the Chilean Navy authorized a research project organized by the National Petroleum Company of Chile (***ENAP***)[712]. The project involved a bathymetry survey and seismic tests on the seabed off the coast of Chile[713]. The area surveyed by the research vessel, which was operated by the Western Geophysical Company of America, under contract to ENAP, included an area along a parallel of latitude in the vicinity of the maritime-boundary parallel (see **Figure 79**).

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708 Counter-Memorial, paras 3.118-3.119.

709 See Reply, para. 4.26.

710 See UNCLOS, Art. 56(b)(ii).

711 See, e.g., Counter-Memorial, paras 3.115(c) and 3.115(f).

712 See Letter No. 13000/5 of 25 February 1977 from the Director of the Hydrographic Institute of the Chilean Navy to the General Manager of ENAP, **Annex 56**.

713 See Western Geophysical Company of America, *Final Field Operation Report*, March-November 1977, **Annex 147**, pp. 1-3.

Areas defined by Chile's National Service for Fisheries (SERNAPESCA) for monitoring purposes

**Figure 78**

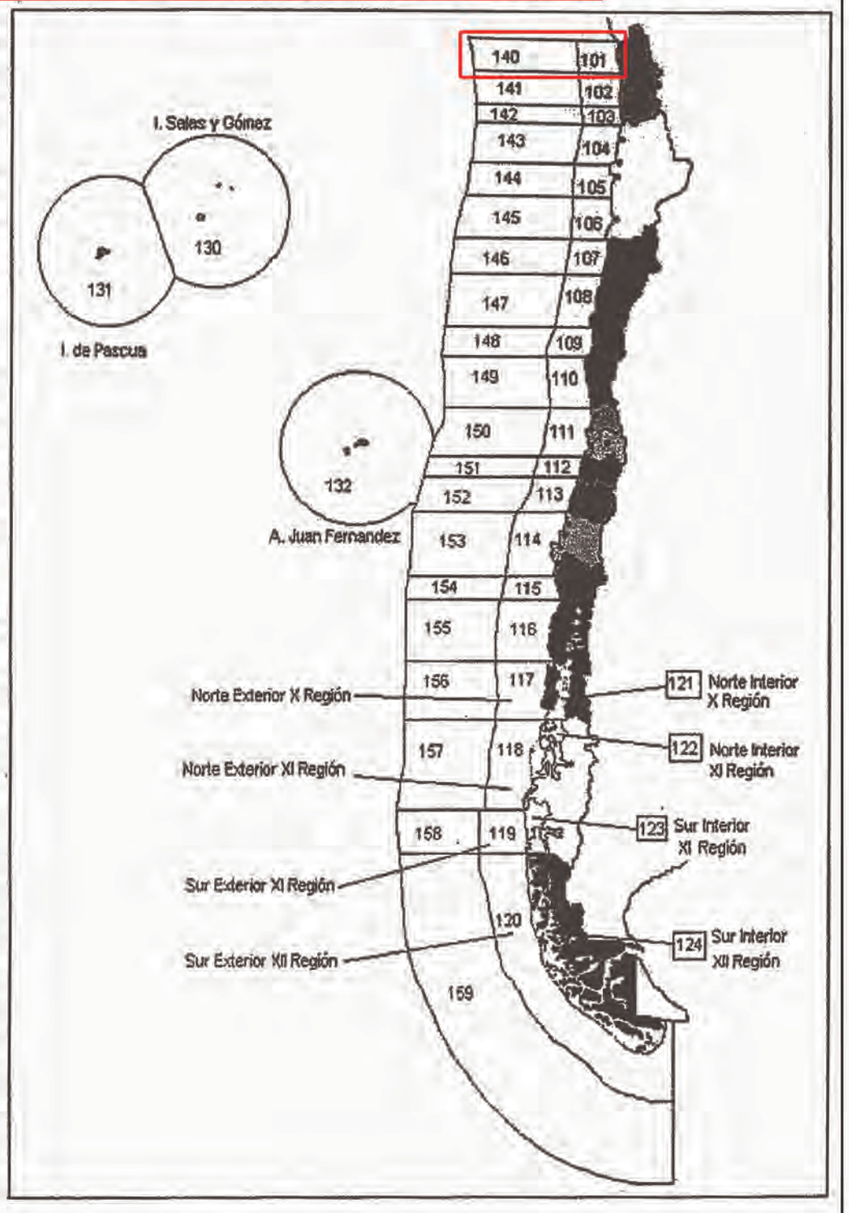
COORDINATES OF VERTEXES OF FISHING ZONES

Use this table to define your fishing zone corresponding to point 4 of the Industrial Unload Form

**COORDENADAS DE VÉRTICES DE ZONAS DE PESCA**

UTILICE ESTA TABLA PARA DEFINIR SU ZONA DE PESCA CORRESPONDIENTE AL PUNTO 4 DEL FORMULARIO DE DESEMBARQUE INDUSTRIAL

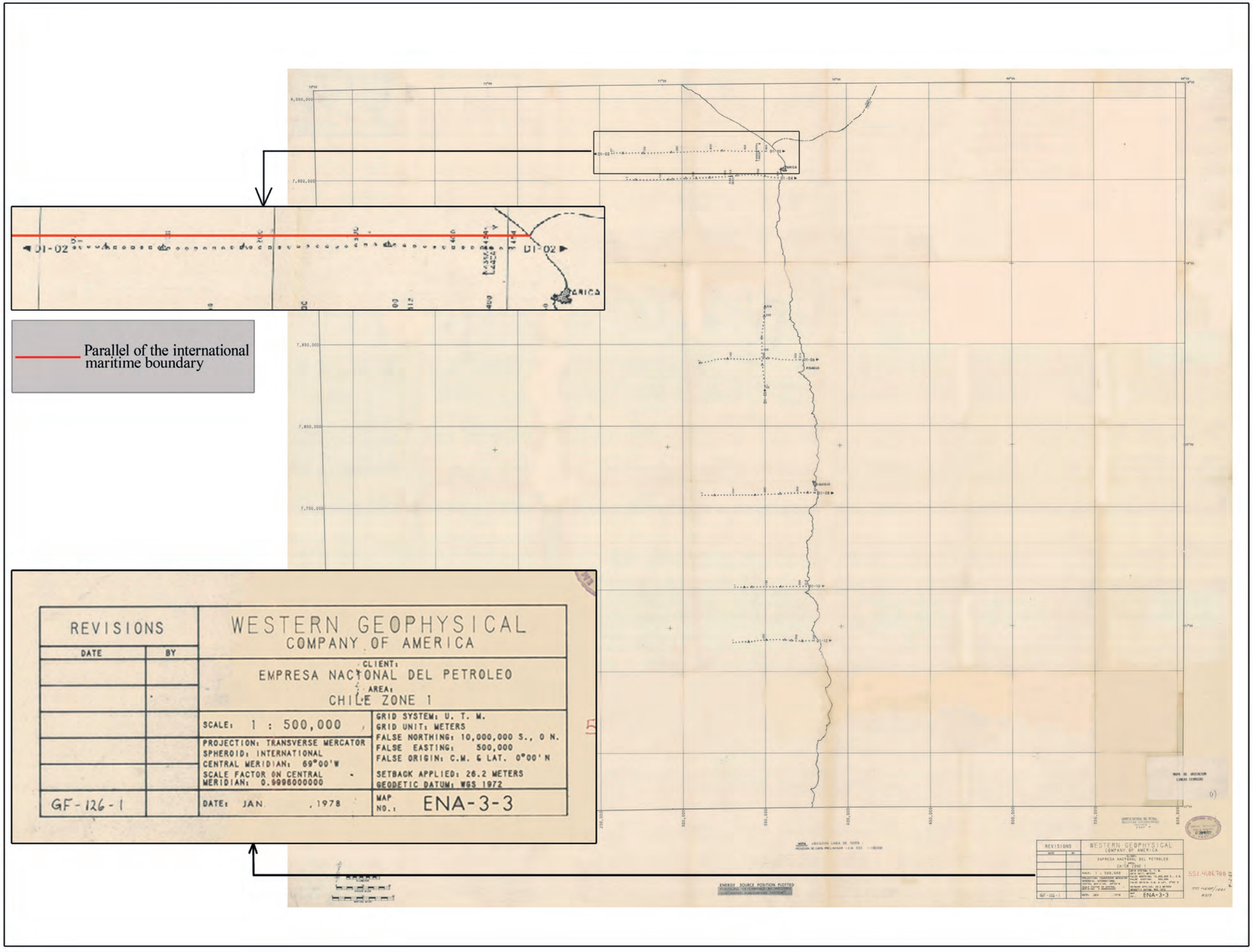
| número de zona | vértices | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Noreste | | Sureste | | Surweste | | Norweste | |
| | latitud | longitud | latitud | longitud | latitud | longitud | latitud | longitud |
| 101 | 18° 21,00´ | 70° 22,67´ | 19° 13,03´ | 70° 17,03´ | 19° 13,03´ | 71° 20,30´ | 18° 21,00´ | 71° 26,00´ |
| 102 | 19° 13,03´ | 70° 17,03´ | 20° 48,67´ | 70° 12,60´ | 20° 48,67´ | 71° 16,30´ | 19° 13,03´ | 71° 20,30´ |
| 103 | 20° 48,67´ | 70° 12,60´ | 21° 25,57´ | 70° 04,00´ | 21° 25,57´ | 71° 08,30´ | 20° 48,67´ | 71° 16,30´ |
| 104 | 21° 25,57´ | 70° 04,00´ | 23° 01,30´ | 70° 30,90´ | 23° 01,30´ | 71° 35,60´ | 21° 25,57´ | 71° 08,30´ |
| 105 | 23° 01,30´ | 70° 30,90´ | 24° 14,28´ | 70° 32,00´ | 24° 14,28´ | 71° 37,20´ | 23° 01,30´ | 71° 35,60´ |
| 106 | 24° 14,28´ | 70° 32,00´ | 26° 03,50´ | 70° 35,00´ | 26° 03,50´ | 71° 45,60´ | 24° 14,28´ | 71° 37,20´ |
| 107 | 26° 03,50´ | 70° 35,00´ | 27° 06,92´ | 70° 56,45´ | 27° 06,92´ | 72° 02,80´ | 26° 03,50´ | 71° 45,60´ |
| 108 | 27° 06,92´ | 70° 56,45´ | 29° 10,58´ | 71° 30,00´ | 29° 10,58´ | 72° 37,50´ | 27° 06,92´ | 72° 02,80´ |
| 109 | 29° 10,58´ | 71° 30,00´ | 30° 14,25´ | 71° 37,63´ | 30° 14,25´ | 72° 42,70´ | 29° 10,58´ | 72° 37,50´ |
| 110 | 30° 14, 25´ | 71° 37,63´ | 32° 10,38´ | 71° 34,00´ | 32° 10,38´ | 72° 43,10´ | 30° 14,25´ | 72° 42,70´ |
| 111 | 32° 10,38´ | 71° 34,00´ | 33° 53,72´ | 71° 55,00´ | 33° 53,72´ | 72° 01,60´ | 32° 10,38´ | 72° 43,10´ |
| 112 | 33° 53,72´ | 71° 55,00´ | 34° 41,00´ | 72° 06,00´ | 34° 41,00´ | 73° 17,10´ | 33° 53,72´ | 72° 01,60´ |
| 113 | 34° 41,00´ | 72° 06,00´ | 36° 00,65´ | 72° 45,00´ | 36° 00,65´ | 74° 01,00´ | 34° 41,00´ | 73° 17,10´ |
| 114 | 36° 00,65´ | 72° 45,00´ | 38° 28,58´ | 73° 32,00´ | 38° 28,58´ | 74° 47,40´ | 36° 00,65´ | 74° 01,00´ |
| 115 | 38° 28,58´ | 73° 32,00´ | 39° 23,20´ | 73° 14,00´ | 39° 23,20´ | 74° 31,80´ | 38° 28,58´ | 74° 47,40´ |
| 116 | 39° 23,20´ | 73° 14,00´ | 41° 28,60´ | 73° 52,00´ | 41° 28,60´ | 75° 09,10´ | 39° 23,20´ | 74° 31,80´ |
| 117 | 41° 28,60´ | 73° 52,00´ | 43° 44,28´ | 74° 51,00´ | 43° 44,28´ | 76° 15,00´ | 41° 28,60´ | 75° 09,10´ |
| 118 | 43° 44,28´ | 74° 51,00´ | 47° 00,00´ | 75° 25,00´ | 47° 00,00´ | 77° 26,00´ | 43° 44,28´ | 76° 15,00´ |
| 119 | 47° 00,00´ | 75° 25,00´ | 48° 49,42´ | 75° 44,00´ | 48° 49,42´ | 77° 42,00´ | 47° 00,00´ | 77° 26,00´ |
| 120 | 48° 49,42´ | 75° 44,00´ | 57° 18,05´ | 67° 16,87´ | 59X 17,64´ | 67° 16,87´ | 48° 49,42´ | 77° 42,00´ |
| 121 | 41° 28,60´ | | 43° 44,28´ | | 43° 44,28´ | 74° 51,00´ | 41° 28,60´ | 73° 52,00´ |
| 122 | 43° 44,28´ | | 48° 49,42´ | | 47X 00,00´ | 75° 25,00´ | 43° 44,28´ | 74° 51,00´ |
| 123 | | | | | 48° 49,42´ | 75° 44,00´ | 47° 00,00´ | 75° 25,00´ |
| 124 | | | | | | | 47° 00,00´ | 75° 25,00´ |
| 140 | 18° 21.00´ | 71° 26,00´ | 19° 13,03´ | 71° 20,30´ | 19° 13,03´ | 73° 51,00´ | 18° 21,00´ | 73° 53,00´ |
| 141 | 19° 13,03 | 71° 20,30´ | 20° 48,67´ | 71° 16,30´ | 20° 48,67´ | 73° 46,70´ | 19° 13,03´ | 73° 51,00´ |
| 142 | 20° 48,67´ | 71° 16,30´ | 21° 25,57´ | 71° 08,30´ | 21° 25,57´ | 73° 39,30´ | 20° 48,67´ | 73° 46,70´ |
| 143 | 21° 25,57´ | 71° 08,30´ | 23° 01,30´ | 71° 35,60´ | 23° 01,30´ | 74° 06,80´ | 21° 25,57´ | 73° 39,30´ |
| 144 | 23° 01,30´ | 71° 35,60´ | 24° 14,28´ | 71° 37,20´ | 24° 14,28´ | 74° 09,80´ | 23° 01,30´ | 74° 06,80´ |
| 145 | 24° 14,28´ | 71° 37,20´ | 26° 03,50´ | 71° 45,60´ | 26° 03,50´ | 74° 21,00´ | 24° 14,28´ | 74° 09,80´ |
| 146 | 26° 03,50´ | 71° 45,60´ | 27° 06,92´ | 72° 02,80´ | 27° 06,92´ | 74° 39,20´ | 26° 03,50´ | 74° 21,00´ |
| 147 | 27° 06,92´ | 72° 02,80´ | 29° 10,58´ | 72° 37,50´ | 29° 10,58´ | 75° 17,10´ | 27° 06,92´ | 74° 39,20´ |
| 148 | 29° 10,58´ | 72° 37,50´ | 30° 14,25´ | 72° 42,70´ | 30° 14,25´ | 75° 27,90´ | 29° 10,58´ | 75° 17,10´ |
| 149 | 30° 14,25´ | 72° 42,70´ | 32° 10,38´ | 72° 43,10´ | 32° 10,38´ | 75° 13,60´ | 30° 14,25´ | 75° 27,90´ |
| 150 | 32° 10,38´ | 72° 43,10´ | 33° 53,72´ | 72° 01,60´ | 33° 53,72´ | 74° 46,20´ | 32° 10,38´ | 75° 13,60´ |
| 151 | 33° 53,72´ | 72° 01,60´ | 34° 41,00´ | 73° 17,10´ | 34° 41,00´ | 76° 54,00´ | 33° 53,72´ | 74° 46,20´ |
| 152 | 34° 41,00´ | 73° 17,10´ | 36° 00,65´ | 74° 01,00´ | 36° 00,65´ | 76° 56,60´ | 34° 41,00´ | 76° 54,00´ |
| 153 | 36° 00,65´ | 74° 01,00´ | 38° 28,58´ | 74° 47,40´ | 38° 28,58´ | 78° 11,80´ | 36° 00,65´ | 76° 56,60´ |
| 154 | 38° 28,58´ | 74° 47,40´ | 39° 23,20´ | 74° 31,80´ | 39° 23,20´ | 78° 01,00´ | 38° 28,58´ | 78° 11,80´ |
| 155 | 39° 23,20´ | 74° 31,80´ | 41° 28,60´ | 75° 09,10´ | 41° 28,60´ | 78° 16,30´ | 39° 23,20´ | 78° 01,00´ |
| 156 | 41° 28,60´ | 75° 09,10´ | 43° 44,28´ | 76° 15,00´ | 43° 44,28´ | 79° 27,60´ | 41° 28,60´ | 78° 16,30´ |
| 157 | 43° 44,28´ | 76° 15,00´ | 47° 00,00´ | 77° 26,00´ | 47° 00,00´ | 80° 18,00´ | 43° 44,28´ | 79° 27,60´ |
| 158 | 47° 00,00´ | 77° 26,00´ | 48° 49,42´ | 77° 42,00´ | 48° 49,42´ | 80° 47,00´ | 47° 00,00´ | 80° 18,00´ |
| 159 | 57° 18,05´ | 67° 16,87´ | 59° 17,64´ | 67° 16,87´ | | | | |
| 160 : | AGUAS INTERNACIONALES | | | | | | 48° 49,42´ | 80° 47,00´ |




Source: Industrial Unload Form DI-01 issued by Chile's National Service for Fisheries pursuant to Decree No. 464 of 31 July 1995

**Figure 79**

Sketch-map of the area surveyed by the research vessel operated by the Western Geophysical Company of America for ENAP in 1977




Source: Western Geophysical Company of America, Map ENA-3-3, 1:500,000, 1978

3.97. What is more, Peru's position in the Reply in respect of the CPPS-coordinated project for the study of "El Niño" is inconsistent with its own position when the project commenced in 1998. When an urgent meeting was convened in the city of Callao in Peru in March 1998 to discuss the details of the project, the head of the Sea Institute of Peru (***IMARPE***), Mr. Luis A Giampietri Rojas, expressed his understanding that each CPPS Member State nominated one official institution[714] and tasked it to conduct research within its "maritime area of national jurisdiction"[715]. He clearly acknowledged that each CPPS Member State was responsible for conducting research and collecting data within its maritime zone. **Figure 36** of the Counter-Memorial reproduced a sketch-map from the report of the second CPPS joint scientific research programme in 1999, showing that Chile, Ecuador and Peru conducted research within their respective maritime zones, limited by two parallels, to the north and south[716].

3.98. The 13th joint scientific research programme was conducted in 2010 with the participation of Colombia, Ecuador and Peru. (Chile did not participate, because of the major earthquake and the devastating tsunami which followed it in February 2010.) The report issued by Colombia, the regional coordinator of this project, on the findings of the programme confirms that the three participating States conducted research in their respective "jurisdictional waters"[717]. The project is stated to have covered an aggregate area between 7° N and 20° S, but Figure 1 of the report, indicating the oceanographic stations used

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714 The Member States nominated the following institutions: Chile: IFOP (Institute for the Promotion of Fisheries); Colombia: CCCP (Centre for Oceanographic and Hydrographic Investigation of the Pacific); Ecuador: INOCAR (Oceanographic Institute of the Navy); Peru: IMARPE (Sea Institute of Peru).

715 Speech of the President of the Executive Board of IMARPE, Vice-Admiral Luis A. Giampietri Rojas, opening the extraordinary meeting of the coordination committee of the Regional Oceanographic Cruise of the Southeast Pacific, reproduced in Annex I to the Minutes of the Urgent Meeting of the Coordination Committee of the Joint Regional Cruise of Oceanographic Investigation in the Southeast Pacific, 26-27 March 1998, **Annex 16**.

716 Counter-Memorial, Vol. I, after pp. 240.

717 Final Report of the 13th Joint Oceanographic Regional Cruise in the Southeast Pacific, undated, **Annex 137**, p. 10.

by the three States for the research (reproduced here as **Figure 80**), shows that Peru's IMARPE did not conduct any research in the "*área en controversia*" now claimed by Peru[718].

## I. SUBMARINE CABLES ON PERU'S CONTINENTAL SHELF

3.99. The application of the parallel of Hito No. 1 has not been limited to various types of jurisdiction in respect of the water-column. This Subsection briefly describes Peru's application of the parallel of Hito No. 1 as the southern limit of its continental shelf in authorizing the laying of a submarine cable system.

3.100. A resolution issued by the Director-General of Captaincies and Coastguard of Peru in September 2000 approved the preliminary plan for the installation on Peru's continental shelf of two segments of a submarine cable system running along the coasts of, among other countries, Colombia, Ecuador, Peru and Chile[719]. Peru's authorization was issued in respect of part of a *Segment N* in the north, from a point with coordinates 3° 23' 00.0" S and 88° 18' 39.6" W, and part of a *Segment O* in the south, down to a point with coordinates 18° 21' 00.0" S and 73° 35' 58.0" W[720]. The authorization thus reflects Peru's understanding that it was not entitled to authorize the laying of a submarine cable on the continental shelf to the north of 3° 23' 00.0" S (boundary with Ecuador) or to the south of 18° 21' 00.0" S (boundary with Chile)[721]. The authorization referred to Article 2(e) of the Law on Control and Surveillance of

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718 For completeness it is noted that by that time Peru had undertaken to observe the *status quo* of the existing boundary line; see "Perú y Chile continuarán con actividades pesqueras [Peru and Chile will continue with fishing activities]", *El Peruano*, 16 August 2007, **Annex 143**.

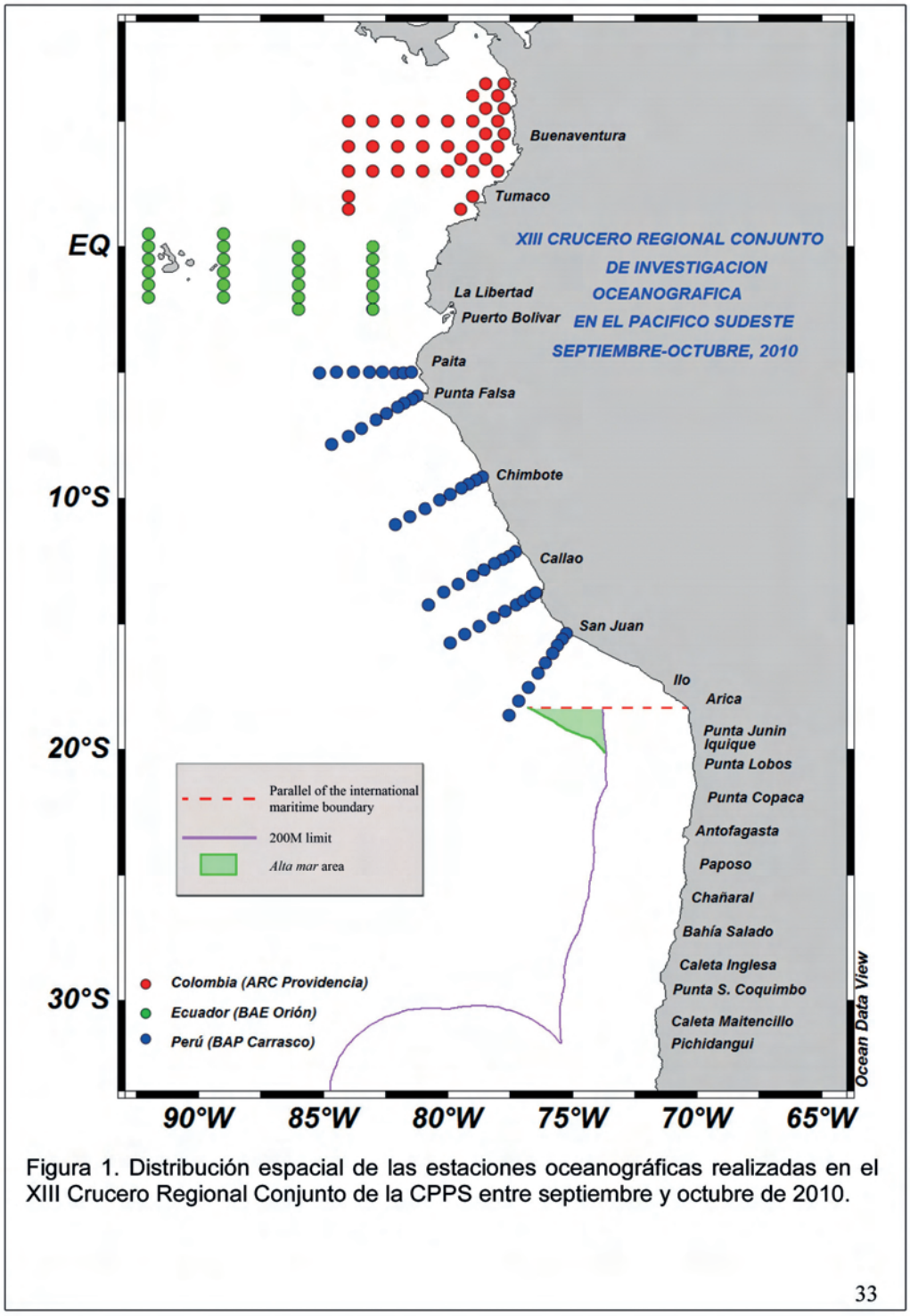
719 See Directorial Resolution No. 0403-2000/DCG of 7 September 2000 of the Directorate-General of Captaincies and Coastguard, **Annex 96**, Art. 1.

720 *Ibid*., Art. 2.

721 The maritime boundary between Ecuador and Peru follows the parallel of 3° 23' 33.96" S. It is presumed that the value was rounded down to the closest minute for ease of administration.

**Figure 80**

Sketch-map in the CPPS report on the thirteenth joint regional oceanographic research (September-October 2010) showing the oceanographic stations of the national institutions of Colombia, Ecuador and Peru (with Chile-Peru maritime boundary, Chile's maritime zone and alta mar area superimposed)




Source: *Informe Final del Décimo Tercero Crucero Regional Conjunto Oceanográfico en el Pacífico Sudeste*, <http://cpps.dyndns.info/cpps-docs-web/dircient/2011/abril/XIV-crucero/CPPS_DC_RCCXIV_06_Informe_XIII_crucero_regional.pdf>

Maritime, Fluvial and Lacustrine Activities, which provides that this Law applies to marine "devices" and installations situated adjacent to Peru's coast up to a distance of 200M[722].

3.101. The submarine cable system authorized by Peru continues southwards and lands at Arica and Valparaíso in Chile[723].

## Section 6. Chile's Internal Note of 1964 and the Bákula Memorandum of 1986 confirm the existence of a maritime boundary

3.102. Peru prominently cites a note by the legal advisor at the Ministry of Foreign Affairs of Chile in September 1964 (the ***Bazán Note***)[724] as evidence of a supposed view by Chile that no maritime boundary with Peru was in place at the time[725]. Peru also claims that the Bákula Memorandum "stands out as an explicit, unequivocal, written assertion, uncontradicted by Chile at the time, that no international maritime boundary between Peru and Chile had been agreed".[726] However, as explained below, the Bazán Note did confirm the existence of a maritime boundary between the Parties. As for the Bákula Memorandum, this was a proposal by Peru for renegotiation of the existing maritime boundary between the two States. These two texts are discussed in turn in this Section.

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722 See Law No. 26620 of 30 May 1996: Law on Control and Surveillance of Maritime, Fluvial and Lacustrine Activities, **Annex 95**, Art. 2(e).

723 As was explained in the Counter-Memorial, Chile authorized a United States company to conduct scientific research in relation to the proposed installation of the same submarine cable system; see Counter-Memorial, para. 3.115(c).

724 Note No. 138 of 15 September 1964 issued by the Head of the Legal Advisor's Office of the Ministry of Foreign Affairs of Chile: text and full translation at **Annex 47**.

725 See Reply, paras 4.86-4.90.

726 *Ibid*., para. 4.47.

## A. CONFIRMATION OF A MARITIME BOUNDARY BETWEEN CHILE AND PERU IN 1964

3.103. The Bazán Note concluded that "[t]he maritime delimitation between Chile and Peru is the parallel that passes through the point at which its land frontier touches the sea"[727]. This is in fact the current position of Chile. The Bazán Note is also consistent with earlier (unpublished) advice provided by the Boundary Commission of the Ministry of Foreign Affairs of Chile in April 1964, to the effect that the maritime boundary between Chile and Peru followed the parallel of latitude of Hito No. 1[728]. Neither of these two internal documents advances Peru's case.

3.104. Peru prefers to place emphasis on a sentence in the Bazán Note saying that the Santiago Declaration "does not constitute an express pact for determining the lateral boundary of the respective territorial seas". Yet the note also confirmed that Article IV of the Santiago Declaration "starts by assuming that this boundary coincides with the parallel that passes through the point where the land boundary reaches the sea"[729] and "reveals that, for the contracting parties, what delimits their territorial sea is neither the prolongation of the land frontier, nor a perpendicular to the coast, nor the median line, but a geographic parallel"[730]. This accords with Chile's position before the Court that "the Santiago Declaration was. . .agreed upon a mutual understanding that the maritime entitlements of the States parties were laterally delimited by the parallel of latitude passing through the point where the relevant land boundary reaches the sea"[731]. The note further concluded that Chile, Ecuador and Peru "cannot

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727 Bazán Note, **Annex 47**, fourth page (last paragraph).

728 See Note No. 25 of 9 April 1964 from the General President of the Boundary Commission of Chile to the Minister of Foreign Affairs of Chile, **Annex 46**, third and fourth paragraphs.

729 Bazán Note, **Annex 47**, second page (fourth paragraph).

730 *Ibid*., second page (last paragraph).

731 Counter-Memorial, para. 2.79.

deny or contravene unilaterally" the existence of an agreed maritime boundary[732].

3.105. In sum, the Bazán Note cannot be fairly read as indicating Chile's position to have been that no maritime boundary was in place with Peru. Indeed, the Note comes to the opposite conclusion. As this was a publicly available document (published in the annual *Memoria* of Chile's Foreign Ministry), Peru would have reacted to this conclusion if it believed it to be wrong. It did not.

### B. The Bákula Memorandum of 1986 was an Isolated Proposal to Renegotiate the Existing Maritime Boundary

3.106. Peru's proposal for renegotiation of its maritime boundary with Chile was made by the then Foreign Minister, Ambassador Allan Wagner, who dispatched Ambassador Bákula with a personal message from the Minister. The message was later submitted to Chile in the form of the Bákula Memorandum[733]. As noted, Peru claims that this démarche stands out as an "explicit, unequivocal, written assertion, uncontradicted by Chile at the time, that no international maritime boundary between Peru and Chile had been agreed"[734]. The document cannot bear the weight of this assertion.

3.107. The Bákula Memorandum was an attempt by Peru to renegotiate the existing maritime boundary[735]. Peru then believed that the "definition of new maritime spaces" in UNCLOS gave it a foothold to seek a renegotiation. This is distinctly not Peru's position today, but it had the merit of acknowledging that a maritime boundary was in place between the Parties, which Peru now denies. The Bákula Memorandum has to be understood in the context of mounting domestic dissatisfaction with the boundary line. As described in Chapter V,

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732 Bazán Note, **Annex 47**, fourth page (first paragraph).

733 See Bákula Memorandum, **Annex 76 to the Memorial**.

734 Reply, para. 4.47.

735 See Counter-Memorial, para. 1.39.

Section 4 below (paragraphs 5.18 *et seq*.), influential Peruvian diplomats, officers, and lawyers, whilst acknowledging the existence of an agreed boundary, were rehearsing several arguments to critique it, and so press for a renegotiation, or cast doubt on its legal force and effect. The Bákula Memorandum is notable for pressing for a renegotiation, while Peru's present case is notable for following a different strand of thought, outright denial.

3.108. The Bákula Memorandum was a plea for renegotiation on the ground that the existing boundary was based on an allegedly "extensive" interpretation of existing agreements between the Parties, which "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"[736]. It also referred to the desirability of "preventing the difficulties which would arise in the absence of an express and appropriate maritime demarcation" and of avoiding a maritime boundary with "some deficiency therein"[737]. The language employed is very circumspect, but the message is clear: the text of the agreements of 1952 and 1954 was in fact understood by Peru to have produced a boundary, but the boundary should be altered and rest on a renegotiated agreement.

3.109. It is also helpful to examine the grounds on which the Bákula Memorandum raised an issue of boundary delimitation. Peru argues in its Reply that the Memorandum distinguished between "'the formal and definitive delimitation' of their marine spaces" of the two States and "*ad hoc* arrangements for specific purposes, such as the 1954 fisheries policing tolerance zone"[738]. This, Peru says, was one of the two reasons for drawing Chile's attention to the need for "formal and definitive delimitation". It is true that an inference from this passage is that Peru was advocating the view that the agreements of 1952 and 1954 were somehow less than a "formal and definitive delimitation". But it was

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736 Bákula Memorandum, **Annex 76 to the Memorial**, second page (third paragraph).

737 *Ibid*., third page (second paragraph).

738 Reply, para. 4.49.

nowhere said that these texts were provisional, or of limited import for fisheries only.

3.110. In fact, contrary to Peru's new argument that the Agreement Relating to a Special Maritime Frontier Zone of 1954 applied only between Peru and Ecuador[739], the Bákula Memorandum clearly accepted that this agreement also established a special maritime frontier zone between Chile and Peru[740]. And the Memorandum did not indicate that this zone was a provisional one, as Peru now claims[741]. Nor did the Memorandum state, for it could not say, that the "maritime frontier" around which the "special zone" was established was a fisheries/fishing boundary, as Peru now asserts[742].

3.111. The second reason in the Bákula Memorandum for raising a delimitation issue was the conclusion of UNCLOS four years earlier. Peru considered that the Parties needed to define, in their respective domestic legislation, the characteristics of the territorial sea, contiguous zone, EEZ and continental shelf "including the reference to the delimitation of the said spaces at international level"[743]. These maritime zones, Peru said, are different from the then existing 200M maritime zones. This was in fact mostly an issue for Peru, rather than Chile[744]. Chile already had a 3M territorial sea[745] and *ipso jure* rights to a continental shelf, which it had claimed in the 1947 proclamation and the 1952 Santiago Declaration. Chile was in fact shortly to adopt UNCLOS-compliant zones in its domestic law a few months later[746]. By contrast, Peru did

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739 See Memorial, para. 4.105; Reply, p. 192, footnote 356.

740 See Bákula Memorandum, **Annex 76 to the Memorial**, second page (third paragraph). Also see the Counter-Memorial, para. 2.222.

741 See Reply, para. 2.81.

742 *Ibid*., paras 2.81 and 4.25.

743 Bákula Memorandum, **Annex 76 to the Memorial**, second page (fourth paragraph).

744 *Ibid*., second page (last paragraph).

745 See Supreme Decree No. 1340 of 14 June 1941, **Annex 26 to the Memorial**.

746 See para. 3.117 below.

not, and does not have, differentiated zones, but rather a singular, undivided "maritime dominion"[747]. In any event, since Peru did not ratify UNCLOS, the argument made in the Bákula Memorandum was lost to it, and Peru has now adopted the new strategy of pretending that no maritime boundary was ever agreed.

3.112. Ultimately, that Peru was seeking to renegotiate an agreed maritime boundary already in place — rather than making an "explicit" or "unequivocal" assertion that no boundary had been agreed at all — was reflected in contemporaneous public remarks by Peru's Foreign Minister himself. Minister Wagner is reported to have stated in June 1986 that the Santiago Declaration established the rules for maritime delimitation and the existing line of parallel should be "corrected"[748].

3.113. If further proof were required of Peru's intent in the Bákula Memorandum, it is important to note that it remained without suite. Chile did not see any need to respond immediately to Peru's proposal for a renegotiation and, rather than agreeing to negotiate, it continued applying the parallel as the maritime boundary. And, signally, so did Peru, and without so much as reserving its position in any way in any subsequent official instrument or communication with Chile. The Bákula Memorandum was an isolated event. Peru did not pursue this issue further with Chile for the next 14 years.

3.114. Peru does not deny its failure to follow-up on the Bákula Memorandum. But it argues that the Memorandum was effectively a blanket pre-emptive measure, precluding "any possibility that Chile could have considered that applications of the fisheries policing line could be regarded as evidence of

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747 See Counter-Memorial, paras 2.166-2.176 and paras 7.38-7.50 below.

748 "Chile y Perú Analizan Delimitación Marina [Chile and Peru analyze marine delimitation]", *El Mercurio*, 12 June 1986, **Annex 141**. Also see "Cancillería chilena informa sobre delimitación con Perú [Chilean Ministry of Foreign Affairs informs about delimitation with Peru]", *El Comercio*, 17 June 1986, **Annex 142**.

the existence of an agreed international maritime boundary"[749]. This argument, however, is premised on the wrong footing that the Memorandum spoke of a "fisheries policing line". This is an unsupported gloss 25 years after the event. A further point is that Peru's own conduct post-1986, affirmatively observing the boundary without reservations or qualifications[750], defeats any possible inference that the Bákula Memorandum stops the clock for evidential purposes. Indeed, Peru's own conduct between 1986 and 2000 shows that the Bákula Memorandum cannot possibly be read as denying the existence of the boundary.

3.115. To illustrate, the Harbour Master of Ilo, the senior Peru Navy officer at the port closest to the vicinity of the boundary, continued to use the line of the Hito No. 1 parallel, described in official administrative decisions as the "dividing line of the maritime frontier" and the "frontier line of the Republic of Chile"[751], in order to determine whether Chilean fishing vessels had crossed into Peru's "maritime dominion". The terminology is plain, and at odds with Peru's argument that the boundary was a functional line based on an *ad hoc* agreement. The "dividing line of the maritime frontier" is the southern limit of Peru's "maritime dominion"[752].

3.116. Cartographic materials post-1986 are to the same effect. As was discussed more fully above (paragraphs 3.33-3.41), Peru's Foreign Ministry continued to authorize the depiction of Peru's maritime zone bounded by two parallels, to the north and to the south[753]. Nor did Peru protest, until 2000,

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749 Reply, para. 4.45.

750 Chile pointed out in the Counter-Memorial (para. 1.42) that Peru did not seek to include a "without prejudice" clause in the many agreements concluded under the auspices of the CPPS, although this is normal practice in treaties which may affect a party's entitlement to a disputed or undelimited maritime zone. Peru remained silent on this point.

751 Both terms were used in, for example, Resolution No. 006-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 176 to the Counter-Memorial**.

752 Also see Counter-Memorial, paras 3.90-3.92.

753 *Ibid*., paras 3.145-3.151.

Chile's official charts in 1992, 1994 and 1998 which depicted the maritime boundary as the parallel of Hito No. 1[754]. If the Bákula Memorandum had the general pre-emptive effect which Peru now contends it did, there would have been no need for these objections in 2000. The fact is that they represented a change of Peru's position.

3.117. Chile incorporated UNCLOS-compliant maritime zones in its domestic law in October 1986, shortly after the Bákula Memorandum, confirming on that occasion that "[t]he maritime delimitations referred to in Articles 593 and 596 of the Civil Code shall not affect the current maritime limits"[755]. Peru did not react. When the Chilean Government set in motion the ratification process for UNCLOS in 1994, the Chilean President stated in his message to Congress that there were in place maritime-boundary agreements with Peru and Argentina[756]. Peru did not react. Chile continued to capture Peruvian vessels illegally fishing in its maritime zone to the south of the boundary parallel[757]. Peru did not react. Despite the "urgency" suggested in the Bákula Memorandum in 1986[758], the démarche was abandoned.

3.118. Ambassador Rodríguez Cuadros, a Peruvian author cited in the Reply, also noted that Peru's claim set out in the Bákula Memorandum was an "isolated event" and no official action was taken to follow it up[759]. Even Ambassador Bákula himself considered that Peru should have reacted to Chile's continued

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754 See the Chilean charts of 1992, 1994 and 1998, annexed to Peru's Memorial as **Figure 7.3** (Vol. IV, p. 113), **Figure 5.24** (Vol. IV, p. 79) and **Figure 5.25** (Vol. IV, p. 81) respectively.

755 Law No. 18,565 of 13 October 1986 Amending the Civil Code Regarding Maritime Spaces, **Annex 36 to the Memorial**.

756 See Message from the President of Chile to the House of Deputies of the Congress of Chile with draft agreement relating to UNCLOS and its Annexes, and its Part XI and its annex, Bulletin No. 1425-10, 28 October 1994, **Annex 68**, p. 5.

757 See Counter-Memorial, paras 3.93-3.99.

758 Bákula Memorandum, **Annex 76 to the Memorial**, second page (fourth paragraph).

759 M. Rodríguez Cuadros, *La Soberanía Marítima del Perú — La Controversia entre el Perú y Chile*, 2010, **Annex 183**, p. 91.

enforcement of the boundary parallel[760]. Indeed, as late as 1999, Peru stated, upon the conclusion of the Act of Execution of the 1929 Treaty of Lima, that there remained no pending conflict with Chile[761].

3.119. In sum, the conclusion to draw from the Bákula Memorandum, in the context of the decades of Peruvian practice which preceded and followed that Memorandum, is that it was an isolated proposal for renegotiation of a boundary whose existence the memorandum acknowledged, however grudgingly.

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760 See J. M. Bákula, *Perú: Entre la Realidad y la Utopía — 180 Años de Política Exterior*, Vol. II, 2002, **Annex 164**, p. 1151.

761 See Counter-Memorial, para. 1.41; Statement by the Ministry of Foreign Affairs of Peru on 13 November 1999, **Annex 182 to the Counter-Memorial**.

## CHAPTER IV
## THE POSITION OF ECUADOR

4.1. The Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone are trilateral treaties. Two of the three States parties, Chile and Ecuador, have maintained a constant position on the interpretation and application of these two treaties. That position is that the Santiago Declaration, read together with the Agreement Relating to a Special Maritime Frontier Zone, fully delimited the maritime boundary between Chile and Peru, on the one hand, and between Ecuador and Peru, on the other hand.

4.2. Before Peru began to develop its arguments for the present case, Chile, Ecuador and Peru all had the same interpretation of the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone. This was evidenced, for example, in the explicit interpretative agreement recorded in the 1954 Minutes that the maritime boundaries between the three States had been settled in the Santiago Declaration[762]. Peru's recent tactics have involved saying one thing to Chile and the Court, and something different to Ecuador. This has led Peru to an untenable position: on the one hand, Peru maintains that the Santiago Declaration never established lateral boundaries between any of the three States parties; but on the other hand, Peru says it is in agreement with Ecuador, while Ecuador takes a position which is concordant with Chile's position, namely that the geographic parallel under the Santiago Declaration does constitute its maritime boundary with Peru. Furthermore, Peru's position towards Ecuador has changed over time according to Peru's view of the evolving tactical needs of this case. By contrast, both Chile and Ecuador have expressed, defended and relied upon their consistent position over time: the maritime boundaries of

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[762] See Minutes of the First Session of Commission I of the 1954 Inter-State Conference, 2 December 1954 at 10.00 a.m., **Annex 38 to the Counter-Memorial**, p. 3; Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, p. 7, discussed at paras 2.91-2.98 above.

the three States were settled by agreement in the Santiago Declaration, as complemented by the Agreement Relating to a Special Maritime Frontier Zone.

4.3. The historical record between Peru and Ecuador is described in Section 1. Section 2 describes the inconsistencies between Peru's pleadings in this case and its formal communications to Ecuador. As will be seen in Section 3, in May 2011 Peru fully accepted in substance Ecuador's position on the maritime boundary, which is fully consistent with Chile's position in respect of its own boundary with Peru.

## Section 1. The Historical Record between Ecuador and Peru

4.4. An incident recorded in a diplomatic note from Peru to Ecuador in 1969 is a pertinent example of the established historical position between Peru and Ecuador[763]. A specialized Swiss publisher, Foreign Scouting[764], had published a chart showing the northern limit of a hydrocarbons concession area granted by the Peruvian government as a line running in a north-westerly direction from the seaward terminus of the Ecuador-Peru land boundary. This chart is reproduced as **Figure 81**.

4.5. Ecuador had requested Peru to have the publication rectified in order to respect the maritime boundary, which was the "parallel of the extreme point of Peru's northern territorial frontier"[765]. Peru acknowledged Ecuador's complaint that transgression of that parallel would have the following consequences:

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763 On which see Section 8 of Chapter III of Chile's Counter-Memorial (paras 3.152-3.159).

764 This was the precursor to the IHS Energy Group, a well-known producer of maps and charts for oil and gas matters.

765 Note of 26 September 1969 from the Peruvian Embassy in Ecuador to the Ministry of Foreign Affairs of Ecuador, **Annex 79 to the Counter-Memorial**, first page, second paragraph.

> ". . . a manifest violation would be committed against the international instruments in force which establish the international boundary of the jurisdictional waters, which, according to the same instruments, is also [the international boundary] of the soil and subsoil corresponding to these waters."[766]

4.6. Peru duly requested Foreign Scouting to correct the chart, and reported back to Ecuador that it had made the request and the publisher had made the rectification. With its response to Ecuador, Peru included a copy of the corrected chart in which, again to use Peru's words, "it can be seen that the international boundary is correctly indicated with the inclusion of the following legend: 'Generally recognized offshore boundary between Peru and Ecuador (0[3]° 23' 33.96" S) over the line of parallel from Boca de Capones (Northern Territorial Boundary of Peru).'"[767] The corrected chart is reproduced as **Figure 82**.

4.7. The common understanding of Ecuador and Peru concerning their maritime boundary is also reflected in Peru's practice in issuing hydrocarbon licences on its continental shelf. In 1986 Peru published a diagram showing blocks declared under its 1952 Petroleum Law[768]. The northernmost limit of the northernmost block appears to be the parallel of the point where the Ecuador-Peru land boundary reaches the sea, i.e., the maritime boundary. This is shown on **Figure 83**.

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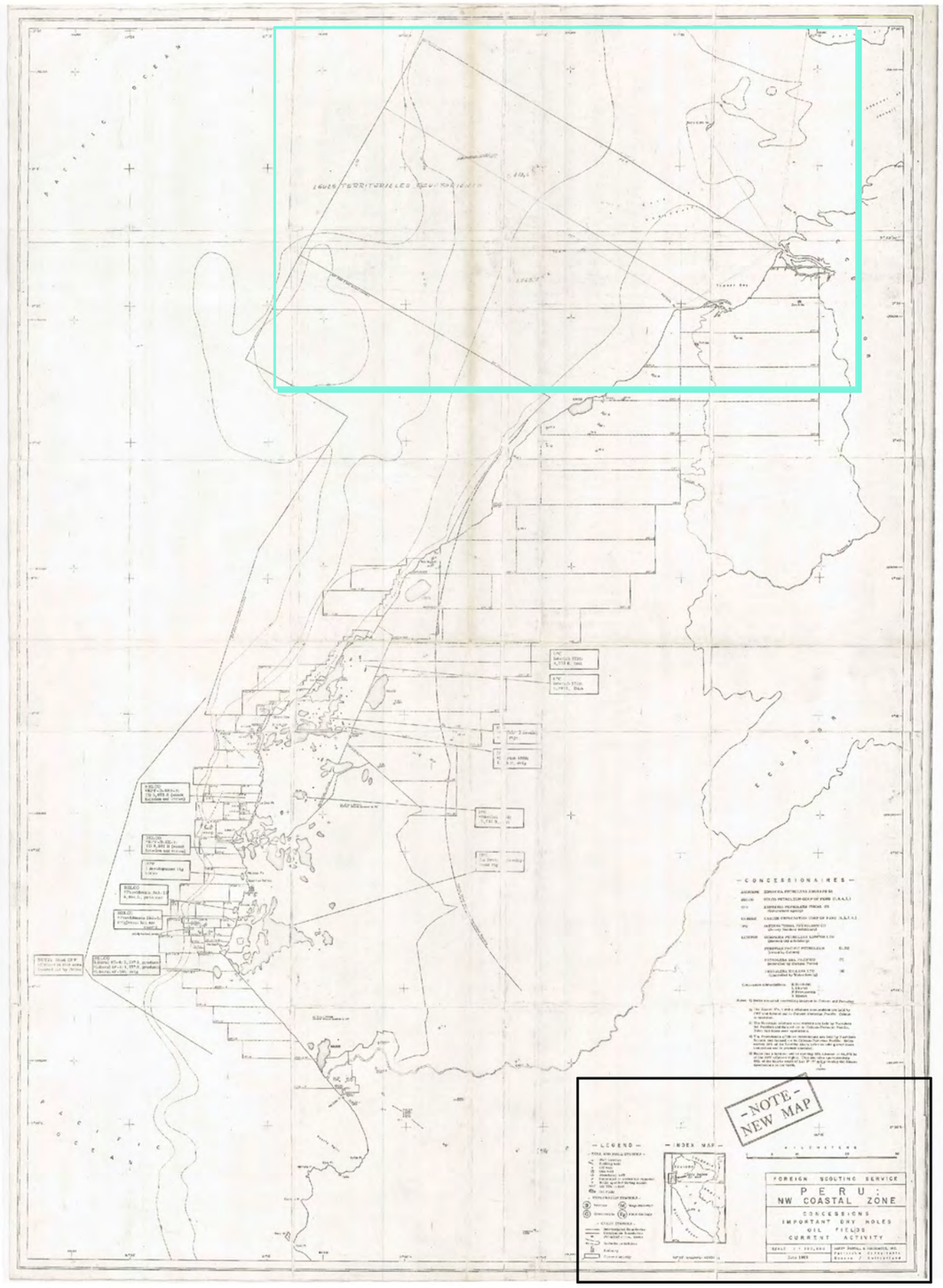
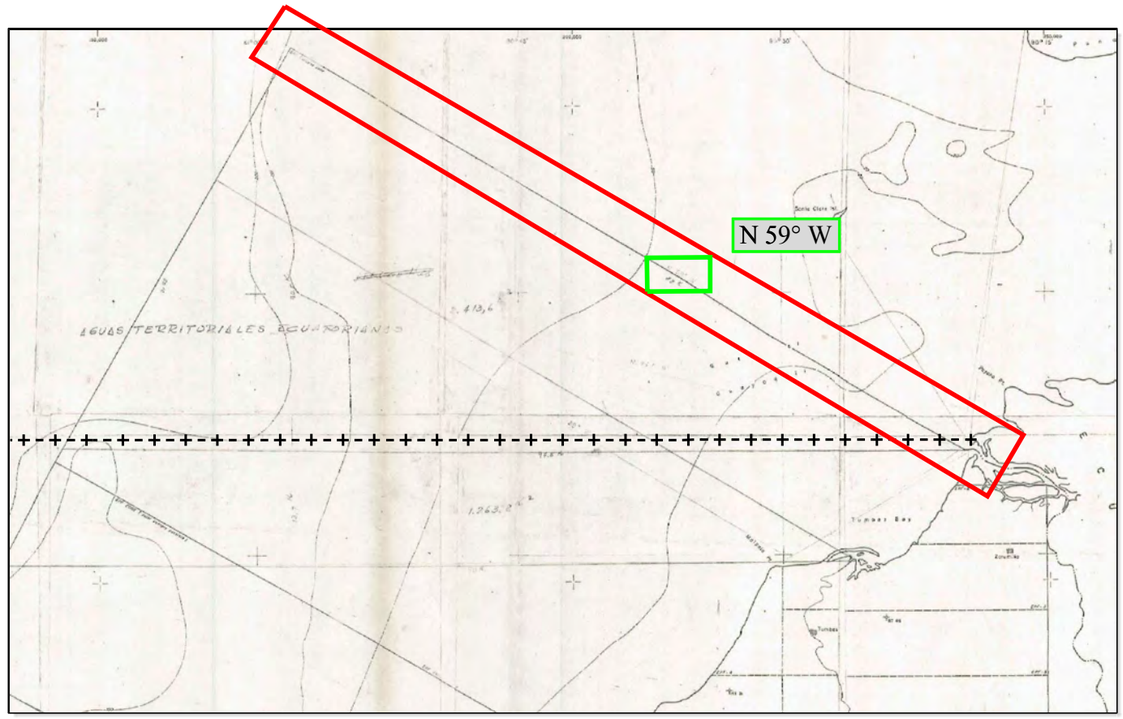
[766] Note of 26 September 1969 from the Peruvian Embassy in Ecuador to the Ministry of Foreign Affairs of Ecuador, **Annex 79 to the Counter-Memorial**, first page, second paragraph.

[767] *Ibid*., second page, first paragraph. This legend is set out in the revised Foreign Scouting chart of 1969 and, in that legend, the latitude of the maritime-boundary parallel is stated to be 03° 23' 33.96" S, but the Peruvian note omitted *3* from the notation *03°*.

[768] Supreme Decree No. 015-86-EM/VME of 21 August 1986 granting Block S-2 of the Titicaca Basin to Petroperu S.A., **Annex 89**.

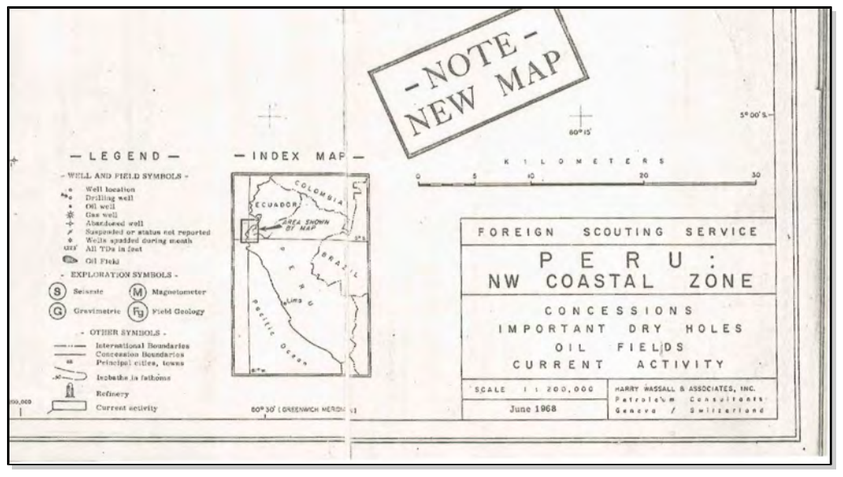
Foreign Scouting map dated 1968 showing oil concession areas granted by Peru, with the northern limit of the northernmost concession areas above the parallel of the Ecuador-Peru maritime boundary



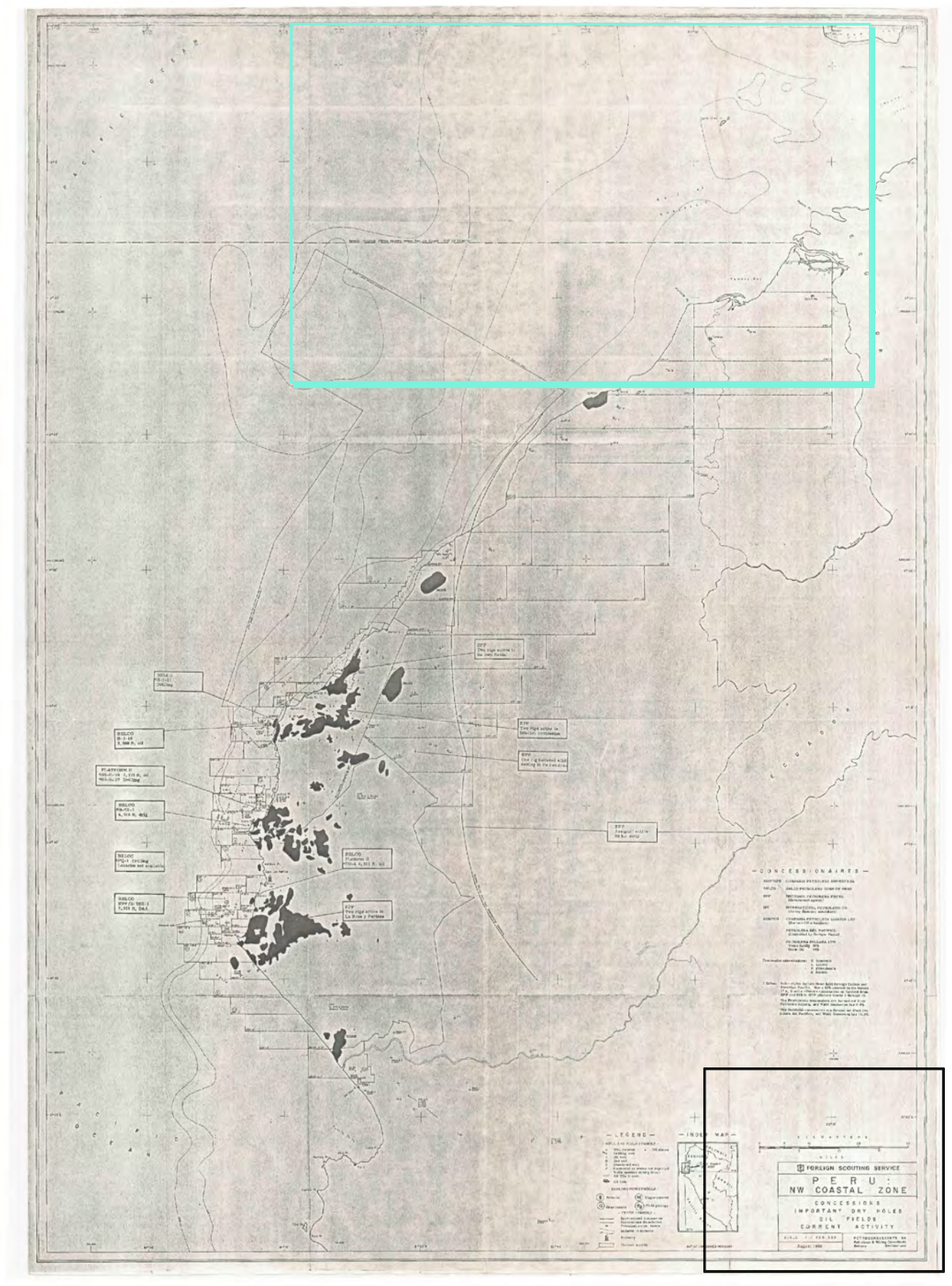

Superimposed line:

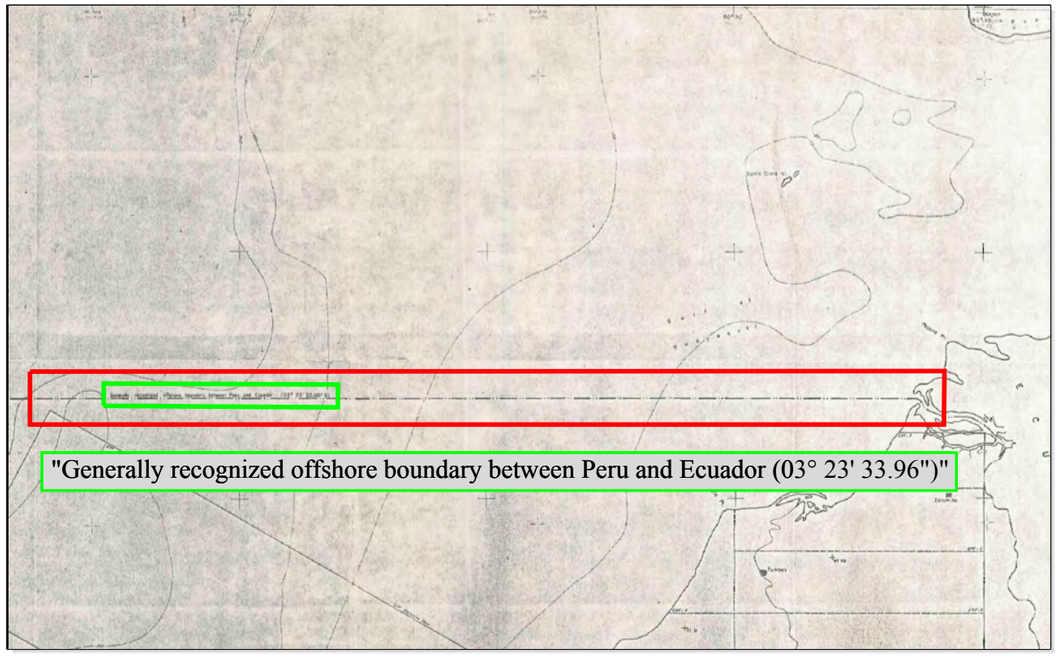
+ - + - + - + Parallel of the international maritime boundary from Ecuador's nautical charts No. IOA 42

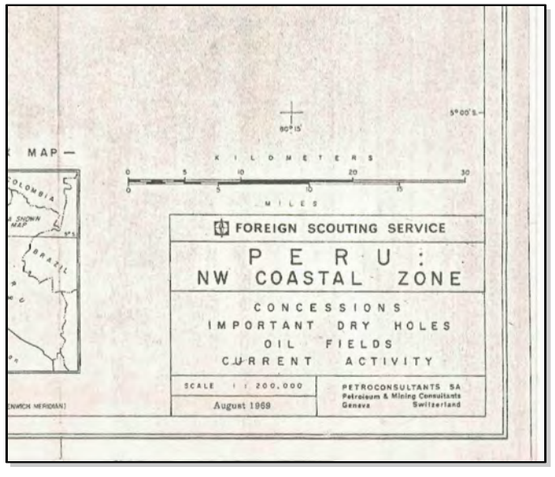



*Prepared for the Ministry of Foreign Affairs, Chile, by UKHO Law of the Sea Consultancy*

Foreign Scouting map dated 1969, showing the oil concession areas granted by Peru to be exclusively to the south of the maritime boundary parallel between Ecuador and Peru



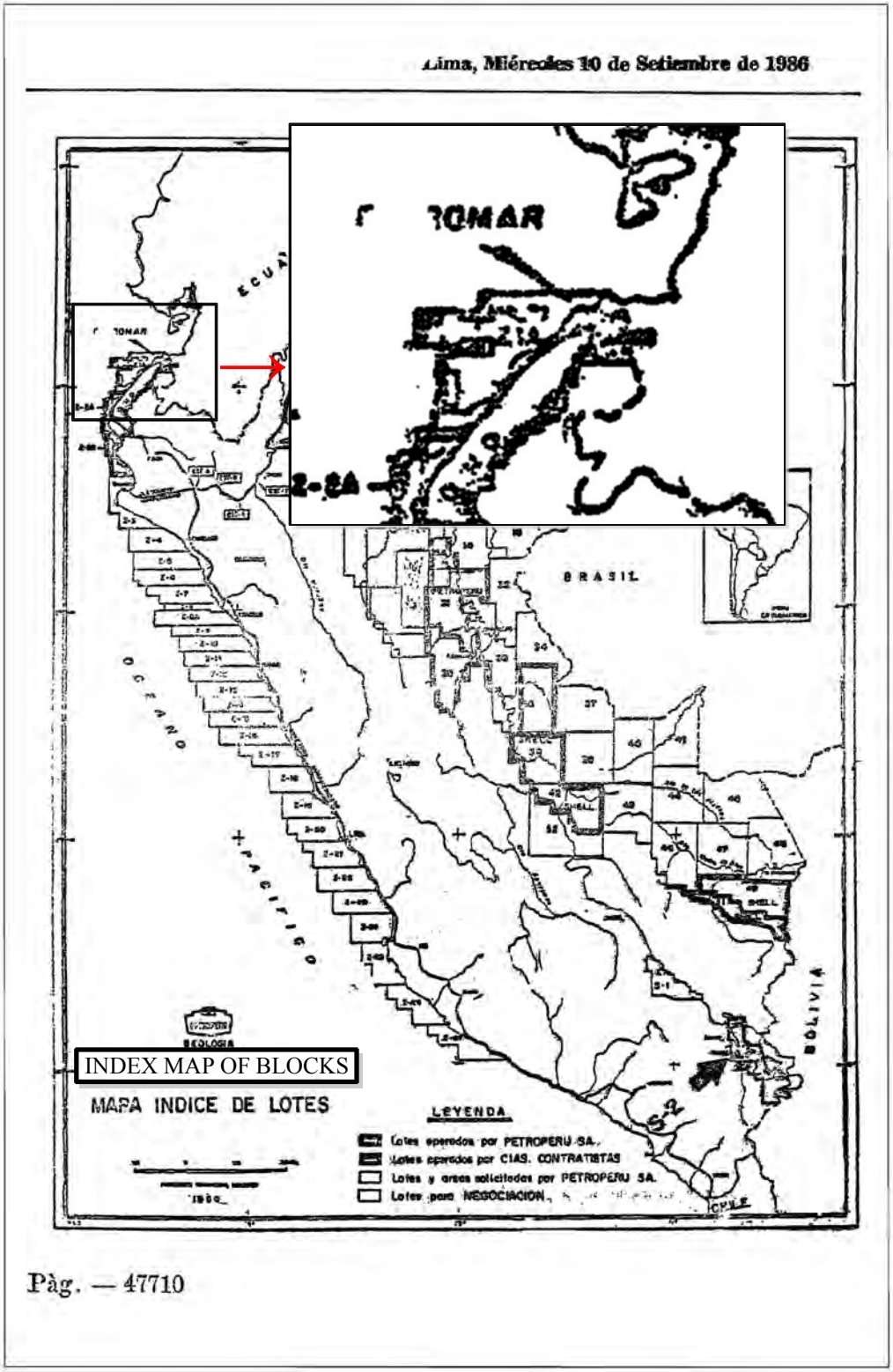




*Prepared for the Ministry of Foreign Affairs, Chile, by UKHO Law of the Sea Consultancy*

**Figure 83**

Peru's oil blocks as depicted in Supreme Decree No. 015-86-EM/VME




Source: *El Peruano - Normas Legales,* 10 September 1986

4.8. This practice contradicts Peru's statement in its Reply that there "is no dispute over the maritime boundary between Peru and Ecuador; but that is not because the maritime boundary was established by the 1952 or 1954 instruments"[769]. Ecuador has been explicit that its maritime boundary with Peru is based upon "the international instruments in force" — the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone. For example, a Resolution of the Ecuadorian Congress in 2005 reiterates–

> "the full force of the Santiago Declaration which established the 200-mile maritime sovereignty on 18 August 1952, and the Agreement Relating to a Special Maritime Frontier Zone of 4 December 1954, International Treaties that established as maritime frontier boundaries between Ecuador, Peru and Chile those which are determined by the parallel at the point at which the land frontier of the signatory States reaches the sea." [770]

4.9. The following month, the Presidents of Chile and Ecuador jointly–

> "reaffirmed the full validity of, and their firm adherence to, the Treaties and other Instruments of the South-East Pacific, in particular, the Declaration on the Maritime Zone of 1952 and the Agreement Relating to a Special Maritime Frontier Zone of 1954, which establish the maritime delimitation between the Parties through a geographic parallel." [771]

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769 Reply, p. 192, footnote 356.

770 Resolution of the National Congress of Ecuador of 15 November 2005, **Annex 223 to the Counter-Memorial**, first operative paragraph.

771 Joint Declaration by the Presidents of Ecuador and Chile on the Occasion of the Official Visit to Ecuador of the President of Chile, 1 December 2005, **Annex 30 to the Counter-Memorial**, para. 6. Also see Minutes of the Second Meeting of the Chile-Ecuador Bilateral Inter-Ministerial Council of 6-7 September 2009, **Annex 32 to the Counter-Memorial**, para. 3.

4.10. When Peru objected to this joint statement on the basis that the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone "are not maritime delimitation treaties"[772], the Ecuadorean Ministry of Foreign Affairs issued the following statement the next day:

> "The maritime boundaries between Ecuador and Peru are grounded on the Declaration of Santiago of 1952, the Agreement Relating to a Special Maritime Frontier Zone of 1954 and the Act of Brasilia of 1998[773] in which it is declared that the boundary disputes between the two countries are definitely settled.
>
> The statement that the Declaration on the Maritime Zone of 1952 and the Agreement Relating to a Special Maritime Frontier Zone of 1954, to which Chile, Ecuador and Peru are Parties, 'are not maritime delimitation treaties', is a unilateral interpretation that does not accord with a strict application of the international law on boundary matters.
>
> The maritime frontier between Ecuador and Peru is the parallel line that is projected on to the sea along the 200 miles, whose latitude is 3° 23' 33" 96 S."[774]

4.11. Ecuador issued a similar statement in 2006, and again in 2008, when Peru repeated the assertion that the Santiago Declaration does not constitute a maritime delimitation agreement but rather establishes only "criteria" for delimitation[775].

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772 Official Communiqué RE 14-05 of 1 December 2005 issued by the Ministry of Foreign Affairs of Peru, **Annex 200 to the Counter-Memorial**.

773 On which see para. 1.59 of Chile's Counter-Memorial. The 1998 Presidential Act of Brasilia was the result of the peace process which followed the 1995 Peru-Ecuador conflict, to which process Chile contributed.

774 Press Release No. 660 of 2 December 2005 issued by the Ministry of Foreign Affairs of Ecuador, **Annex 224 to the Counter-Memorial**, paras 3-5.

775 Note No. 7811 2006/GM of 17 February 2006 from the Ecuadorean Minister of Foreign Affairs to the Peruvian Minister of Foreign Affairs, **Annex 107**; Press

4.12. Demonstrating the regional significance of using lines of latitude and longitude as maritime boundaries, correspondence between Argentina and Ecuador in 1969 confirms Ecuador's understanding of the maritime boundaries established by the Santiago Declaration. On 10 January 1969, Argentina wrote to Ecuador requesting to "be informed about the antecedents that served as the basis for the countries of the South Pacific to adopt, in demarcating their respective territorial seas, the geographic parallels as boundary lines"[776]. (As noted at paragraph 2.143 above, Argentina had proposed to Uruguay a latitudinal boundary, and at the time it was also following the process of signalling the Chile-Peru boundary.) Later the same month Ecuador responded, observing the significance of Peru's Supreme Decree of 1947 as an "antecedent" to the Santiago Declaration[777]. Ecuador explained that in its 1947 Supreme Decree Peru had claimed a seaward projection of 200M "following the line of the geographical parallels", which, Ecuador explained,

> "means that, for each point of the coast, starting at that at which the northern frontier of Peru reaches the sea and ending at that at which its southern frontier reaches the sea, corresponds another one located on the same latitude at two hundred miles from the coast."[778]

4.13. Ecuador added that "[t]his criterion was adopted in the conventions of the South Pacific", and went on to say this:

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Release No. 073 of 7 February 2008 issued by the Ministry of Foreign Affairs of Ecuador, **Annex 108**.

776 Memorandum 2/69 of 10 January 1969 from the Embassy of the Republic of Argentina in Ecuador to the Ministry of Foreign Affairs of Ecuador, **Annex 21**.

777 See Memorandum No. 3-DST of 20 January 1969 from the Ministry of Foreign Affairs of Ecuador to the Embassy of Argentina in Ecuador, **Annex 22**. This is consistent with the Report of the Committee of Foreign Affairs of the Peruvian Congress, dated 4 May 1955, concerning the Agreements and Conventions signed by Peru, Chile and Ecuador at Santiago, on 18 August 1952; and at Lima, on 4 December 1954, **Annex 78**, p. 1, discussed at para. 2.11 above.

778 Memorandum of No. 3-DST of 20 January 1969 from the Ministry of Foreign Affairs of Ecuador to the Embassy of Argentina in Ecuador, **Annex 22**.

> "The norm adopted by the three countries of the South Pacific allows for the external line of the maritime boundary of the 200 miles to be practically an exact reproduction, in dimension and form, of the coastal profile of each one of them, even preserving, as far as latitude is concerned, their astronomic positions, and thus converting both the outer maritime limit and the international maritime frontier into lines of easy and simple recognition"[779].

4.14. This official correspondence with Argentina in 1969 demonstrates that (a) Ecuador considered that at the time of the Santiago Declaration, Peru measured its seaward projection following parallels of latitude[780] and (b) this was an antecedent to the adoption "by the three countries" of parallels of latitude as an "international maritime frontier".

4.15. Peru's attempts to resile from the boundaries agreed in the Santiago Declaration, and acknowledged and acted upon in the Agreement Relating to a Special Maritime Frontier Zone, have been consistently and resolutely resisted by both Chile and Ecuador, both of whom have relied on the stability of their agreed maritime boundaries. A further example of Ecuador's reliance is its 1971 baselines Decree which identifies Ecuador's southernmost baseline as being a "straight line from Puntilla de Santa Elena in the direction of Cabo Blanco (Peru) to the intersection with the geographic parallel constituting the maritime frontier with Peru."[781] This baseline can be seen, for example, on Ecuador's official chart IOA 42, reproduced as **Figure 84**.

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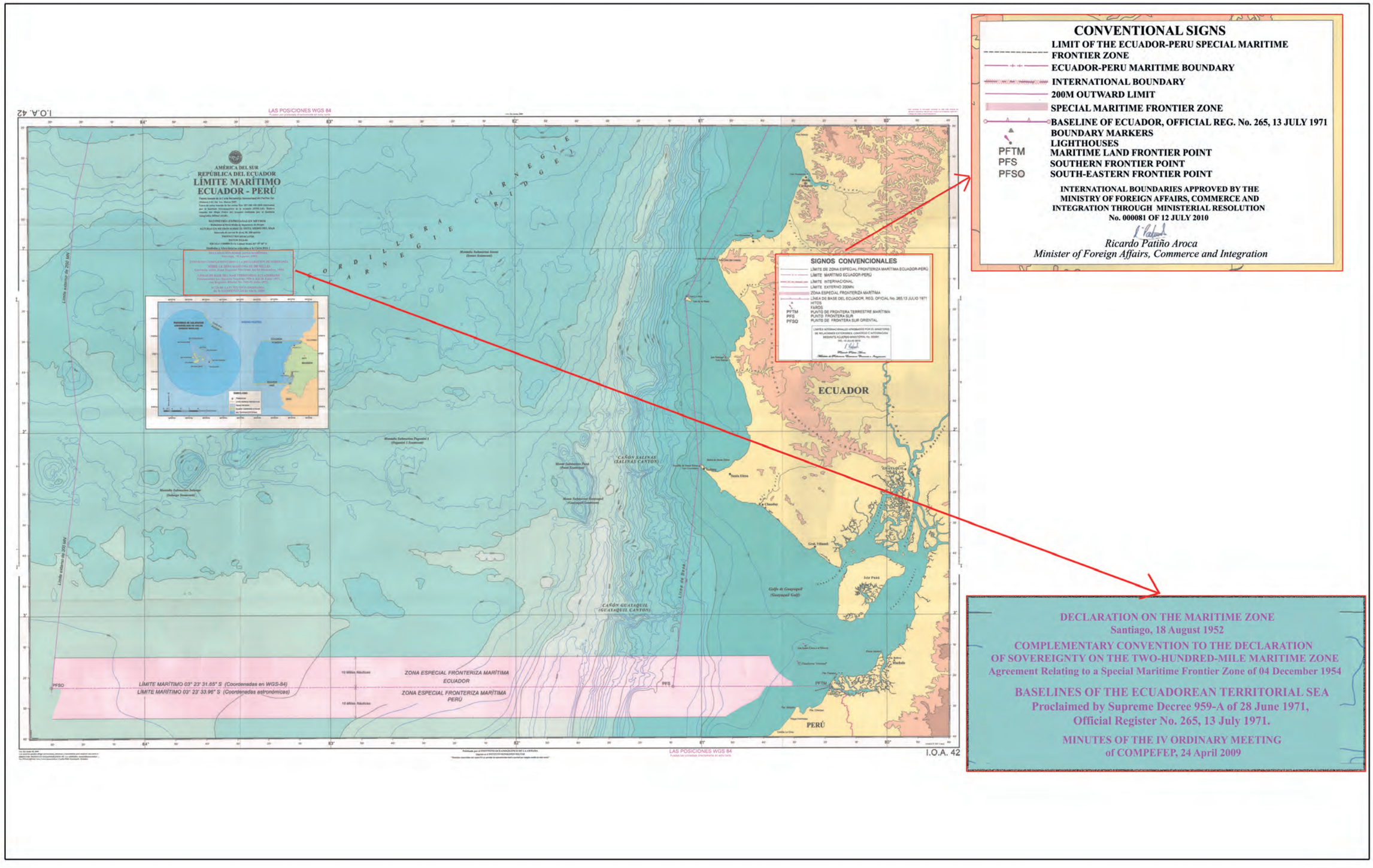
779 Memorandum of No. 3-DST of 20 January 1969 from the Ministry of Foreign Affairs of Ecuador to the Embassy of Argentina in Ecuador, **Annex 22**.

780 This contradicts what Peru now says. For further discussion see paras 2.45-2.52 above.

781 Supreme Decree No. 959-A of 28 June 1971, **Annex 212 to the Counter-Memorial**, Art. 1(d).

**Figure 84**

Ecuadorean Nautical Chart IOA 42 depicting the Ecuador-Peru maritime boundary, the special maritime frontier zone, the straight baselines of Ecuador and the outer limit of Ecuador's maritime zone




Source: Oceanographic Institute of the Ecuadorean Navy, Chart IOA 42, 1:500,000, approved by the Ecuadorean Foreign Ministry on 12 July 2010 and Presidential Decree No. 450 of 2 August 2010 (English translation added)

## Section 2. Diplomatic Events since Peru's Initiation of these Proceedings

4.16. Peru argues in the present litigation that the Santiago Declaration was never a treaty and never delimited a maritime boundary between Chile and Peru. In a letter from its President in June 2010[782], Peru represented to Ecuador that on the basis of the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone, Ecuador and Peru have no "boundary problems" between them. Subsequently, in its Reply of November 2010, Peru denied that the Santiago Declaration or the Agreement Relating to a Special Maritime Frontier Zone delimited the maritime boundary between Ecuador and Peru. This inconsistency is for Peru, not Chile, to explain. However, any confusion created by Peru's manoeuvring was dispelled by Ecuador's issuance, in August 2010, of an official nautical chart depicting its maritime boundary with Peru[783]. The chart and the Presidential Decree accompanying it made clear that the Ecuador-Peru boundary, which follows a parallel of latitude, is based on the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone. Ultimately, in May 2011 Peru accepted that this Ecuadorean chart accurately depicted the Ecuador-Peru maritime boundary.

### A. Peru's June 2010 Letter to Ecuador

4.17. On 9 June 2010, after Chile had submitted its Counter-Memorial of 9 March 2010, and after the Court's Registrar had notified Ecuador of these proceedings in accordance with Article 63 of the Court's Statute, Peru's President wrote to Ecuador's President on the subject of their maritime boundary. Peru's President was writing "to inform [Ecuador's President] about the position of the State of Peru about the effects of those instruments [the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier

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782 Letter of 9 June 2010 from the President of Peru to the President of Ecuador, **Annex 81 to the Reply**.

783 Ecuador chart IOA 42 reproduced as **Figure 84**.

Zone] in connection with our two countries."[784] Peru's letter went on to say that Article IV of the Santiago Declaration "addresses a situation only applicable to the case of Peru and Ecuador" and that the "maritime projection" of islands "is limited by the parallel of latitude"[785]. Hence, "the parallel of latitude from the point at which the land boundary reaches the sea, at *Boca de Capones* (03° 23' 33.96" SL), is only applicable to Peru and Ecuador."[786] Peru's President confirmed that his country's "official position" was that "there are no boundary problems with Ecuador."[787] Thus "the proceedings instituted by Peru before the International Court of Justice solely refer to the maritime boundary between Peru and Chile, where there are characteristics and circumstances different from those existing between our two countries."[788]

4.18. Peru's Reply of November 2010 is inconsistent with Peru's "official position" expressed in the presidential letter only five months earlier. Peru says at paragraph 4.8 of its Reply that "there was no intention on the part of the authors of the Declaration of Santiago to agree upon one or more international maritime boundaries in 1952."[789] In footnote 356 one finds the following statement: "There is no dispute over the maritime boundary between Peru and Ecuador; but that is not because the maritime boundary was established by the 1952 or 1954 instruments."[790] In this statement Peru continues to refer to "the maritime boundary between Peru and Ecuador" but makes the bare assertion that it was not established by the Santiago Declaration or the Agreement Relating to a Special Maritime Frontier Zone. In its letter to Ecuador just five months before Peru filed its Reply, Peru had specifically referred to Article IV of the Santiago

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784 Letter of 9 June 2010 from the President of Peru to the President of Ecuador, **Annex 81 to the Reply**.

785 *Ibid*.

786 *Ibid*.

787 *Ibid*.

788 *Ibid*.

789 Reply, para. 4.8.

790 *Ibid*., p. 192, footnote 356.

Declaration as the basis for its official position that "there are no boundary problems with Ecuador"[791]. Yet in its Reply, where Peru continues to acknowledge the existence of a maritime boundary with Ecuador, it disclaims the Santiago Declaration as the foundation of the boundary. Even more recently, in a letter to the United Nations Secretary-General of 2 May 2011, discussed at paragraph 4.26 below, Peru reverts to acknowledging the significance of Article IV of the Santiago Declaration for the "maritime boundary between Peru and Ecuador", on the basis of "the presence of islands"[792].

4.19. Whilst Peru oscillates as it tries to find escape routes from the fundamental inconsistency between its positions vis-à-vis Ecuador and vis-à-vis Chile and the Court, Ecuador's position has been constant. It was reaffirmed the month following Peru's June 2010 letter to Ecuador, as will presently be seen.

## B. Ecuador's Nautical Chart Depicting the Boundary Parallel with Peru

4.20. On 12 July 2010 Ecuador published an official nautical chart (No. IOA 42) depicting its maritime boundary with Peru. This was followed by a Presidential Decree of 2 August 2010 (No. 450) conferring approval on that chart, "which depicts the Ecuador-Peru maritime boundary [*que grafica el límite marítimo Ecuador-Perú*]"[793]. This recent Ecuadorean chart is reproduced as **Figure 84** in this Rejoinder. It cites the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone, and it depicts the maritime boundary between Peru and Ecuador established by those treaties as following the parallel of latitude of *Boca de Capones*, the last demarcated point of the

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791 Letter of 9 June 2010 from the President of Peru to the President of Ecuador, **Annex 81 to the Reply**.

792 Note (GAB) No. 7-9-C-YY/01 of 2 May 2011 from the Minister of Foreign Affairs of Peru to the Secretary-General of the United Nations, **Annex 40**.

793 Presidential Decree of Ecuador No. 450, 2 August 2010, **Annex 109**, Art. 1.

Ecuador-Peru land boundary, until the outer limit of Ecuador's 200M territorial sea[794].

4.21. The maritime boundary shown on Ecuador's chart is not simply a limit on the maritime projection of Ecuadorean islands. It is a fully delimited maritime boundary between Ecuador's 200M territorial sea and Peru's 200M "maritime dominion", which applies to both continental and insular maritime zones. This is discussed further in paragraph 4.26 below and illustrated on **Figure 86**.

4.22. Ecuador's nautical chart IOA 42 of July 2010 was followed in 2011 by a map issued by Ecuador's Military Geographic Institute showing Ecuador's land and maritime boundaries. This also showed a full delimitation between the maritime zones of Ecuador and Peru, and included both the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone in a list of "boundary treaties concluded by Ecuador". It is reproduced here as **Figure 85**.

4.23. On 10 March 2011, Ecuador submitted to the United Nations copies of chart IOA 42 and the Presidential Decree approving it[795]. The Ecuadorean Foreign Minister explained, in the submittal letter addressed to the Secretary-General of the United Nations, that the nautical chart had been–

> "drawn in application of the geographic parallel of the point at which the land frontier between Ecuador and Peru reaches the sea, as the maritime boundary between the two countries, according to the Declaration of Santiago of 18 August 1952 and the Agreement Relating to a Special Maritime Frontier Zone of 4 December 1954."[796]

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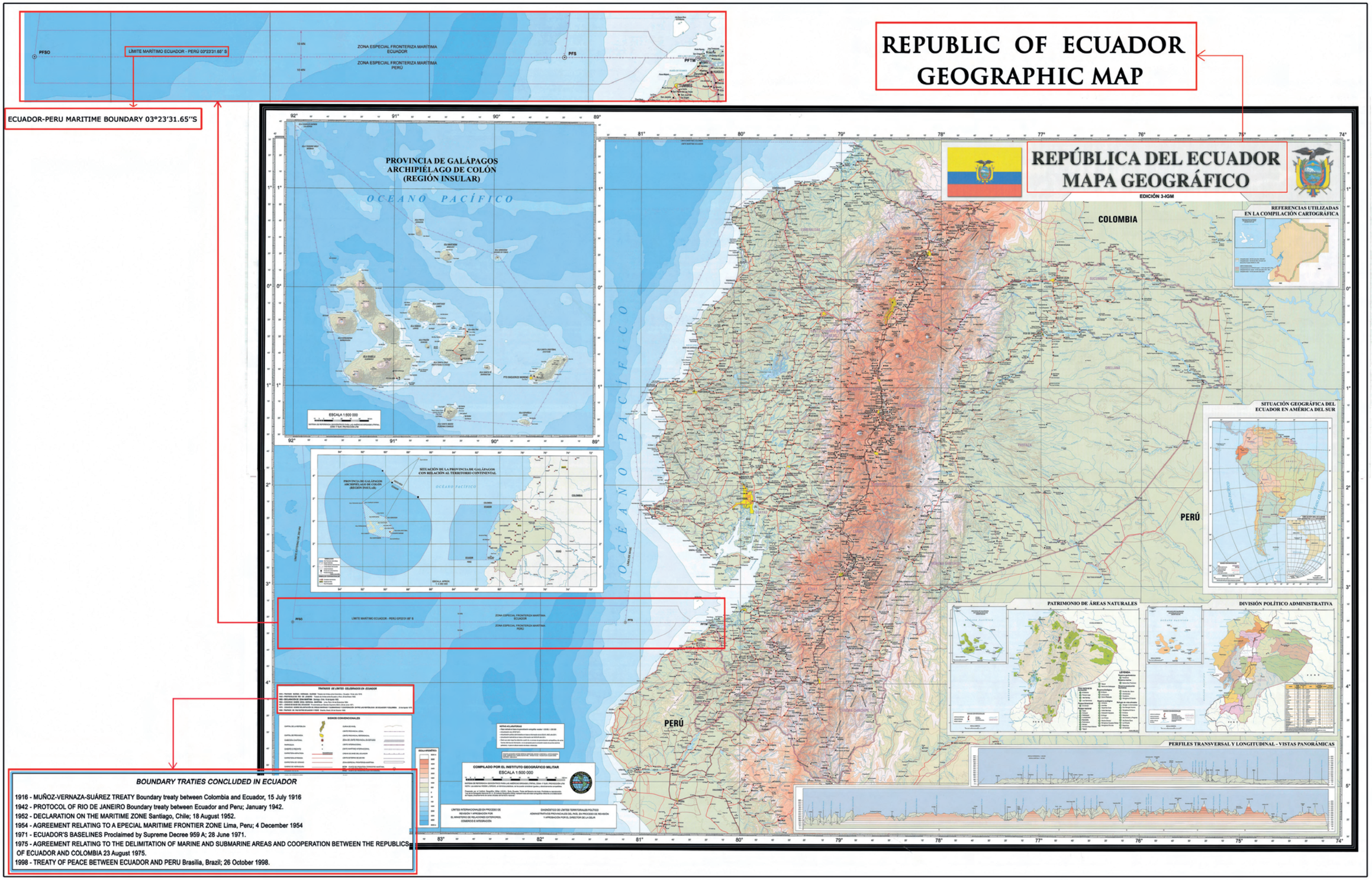
[794] See para. 2.180 above.

[795] See Note No. 4-2-45/2011 of 10 March 2011 from the Permanent Mission of Ecuador to the United Nations to the Secretary-General of the United Nations, **Annex 37**.

[796] See Note No. 4998CGJ/GM/2011 of 9 March 2011 from the Minister of Foreign Affairs of Ecuador to the Secretary-General of the United Nations, **Annex 36**.

**Figure 85**

Republic of Ecuador – Geographic Map (2011)




Source: Military Geographic Institute of Ecuador, *Geographic Map of Ecuador*, 1:500,000, 2011 (English translation added)

4.24. In April 2010, Peru had written to the Secretary-General of the United Nations expressing a "reservation with regard to any map which depicts alleged maritime boundaries between Peru and the neighbouring States."[797] In October 2010, the Ministry of Foreign Affairs of Ecuador issued an official press release stating that–

> "if the boundaries are legally ratified in accordance with the Ecuadorean Nautical Chart (Decree 450), there would be no need to intervene in the proceedings [between Peru and Chile], but if [the Nautical Chart] is challenged by Peru, we should consider seriously the prospect of Ecuador taking part in the proceedings at The Hague"[798].

4.25. When Ecuador deposited chart IOA 42 with the United Nations it expressly objected to Peru's "reservation with regard to any map which depicts alleged maritime boundaries between Peru and the neighbouring States"[799]. Peru then modified this reservation by indicating that it did not apply with respect to Ecuador, and at the same time accepted that chart IOA 42 accurately depicts their maritime boundary[800].

4.26. On 2 May 2011, Peru and Ecuador concluded an exchange of notes in which they confirmed, *inter alia*, that a sketch-map attached to the exchange of notes formed "an integral part" of their "understanding" of their maritime boundary. The agreed sketch-map showed the maritime boundary to be the same parallel of latitude as depicted in Ecuador's chart IOA 42, extending 200M westwards from the point where Ecuador's straight baseline meets the boundary

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797 Letter No. 7-1-SG/26 of 12 April 2010 from the Permanent Mission of Peru to the United Nations to the Secretariat of the United Nations, **Annex 33**.

798 Ministry of Foreign Affairs of Ecuador, *Chile comprometido con la democracia y el orden constitucional*, Press Release No. 758 of 11 October 2010, **Annex 144**.

799 Note No. 4998CGJ/GM/2011 of 9 March 2011 from the Minister of Foreign Affairs of Ecuador to the Secretary-General of the United Nations, **Annex 36**.

800 See Note (GAB) No. 7-9-C-YY/01 of 2 May 2011 from the Minister of Foreign Affairs of Peru to the Secretary-General of the United Nations, **Annex 40**.

parallel. The two States agreed that "this understanding and the graphic representation annexed" would be jointly registered by the two States with the United Nations[801] (see further paragraph 4.35, below). **Figure 86** demonstrates that the agreed understanding of the maritime boundary expressed by Ecuador and Peru in May 2011 is inconsistent with the arguments made by Peru in these proceedings. **Figure 86** takes the Ecuadorean chart IOA 42, which Peru has formally accepted as depicting the true position, and then superimposes the different position that would obtain between Ecuador and Peru if Peru's argument were correct that the Santiago Declaration created a lateral limit only for insular projections. This illustration demonstrates that Peru's argument in these proceedings cannot explain the full delimitation existing between Ecuador and Peru, which was Ecuador's consistent position and which Peru has now come to accept. The true interpretation of Article IV of the Santiago Declaration is that it delimited all maritime zones between all three States parties, not just Ecuador's insular zones as against Peru's continental zones.

### C. Discussion of the Ecuador Boundary in Peru's Pleadings

4.27. In its Memorial, Peru stated that Article IV of the Santiago Declaration "limited only the entitlements generated by certain islands, not the entitlements generated by the continental coast."[802] Thus, Peru said, Article IV of the Santiago Declaration was "a matter of concern only in the context of an Ecuador-Peru border, there being no islands near the Peru-Chile land border which could encroach upon the maritime rights of another State."[803]

4.28. Peru went on to make the following submission in its Memorial:

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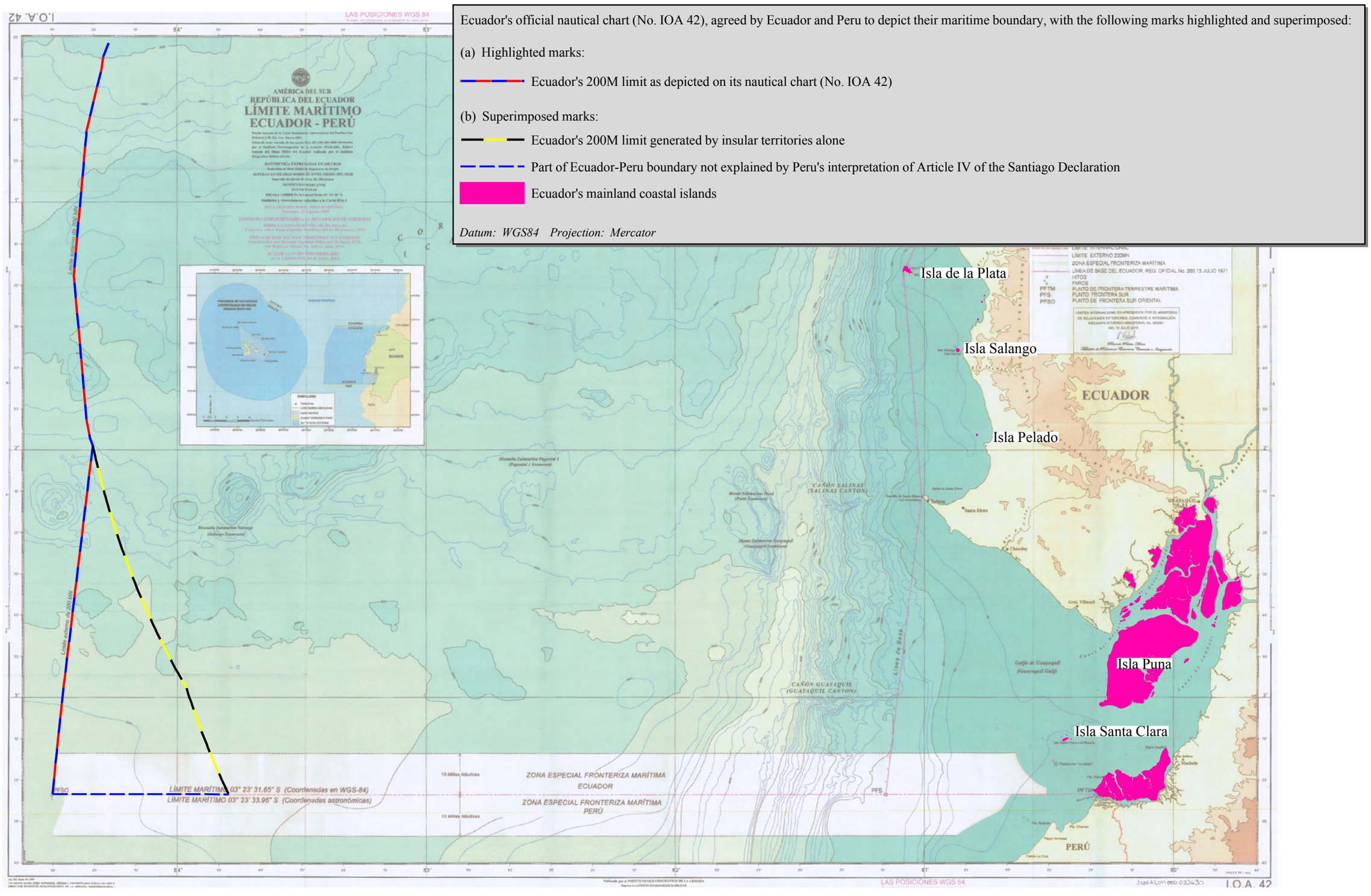
801 See Note (GAB) No. 6-12-YY/01 of 2 May 2011 from the Minister of Foreign Affairs of Peru to the Minister of Foreign Affairs of Ecuador, **Annex 39**, para. 6; and Note No. 9428 GMRECI/CGJ/2011 of 2 May 2011 from the Minister of Foreign Affairs of Ecuador to the Minister of Foreign Affairs of Peru, **Annex 41**, para. 6.

802 Memorial, para. 4.77.

803 *Ibid*.

Peru's interpretation of Article IV of the Santiago Declaration with respect to the Peru-Ecuador maritime boundary, shown on Ecuador's official nautical chart (No. IOA 42)




*Prepared for the Ministry of Foreign Affairs, Chile, by UKHO Law of the Sea Consultancy*

> "*Apart from the second part of Paragraph IV*, which deals with the limit of the maritime zones of certain islands and groups of islands, nothing in the text of the 1952 Declaration of Santiago suggests that the Declaration was intended to have any bearing upon the lateral boundaries between the maritime zones of the three States measured from their continental coasts."[804]

And later in the same paragraph: "aside from the second part of Paragraph IV — [the Santiago Declaration was] not at all concerned with lateral boundaries or geographical parallels."[805]

4.29. Thus Peru plainly said that Article IV of the Santiago Declaration concerned the delimitation of certain Ecuadorean insular maritime zones as against Peru's continental maritime zone. This contradicted Peru's assertion in the Memorial that the Santiago Declaration "did not address lateral boundaries at all"[806] and that in the Santiago Declaration "there was no concern with the question of lateral boundaries between the participating States."[807]

4.30. Similar difficulties appear in Peru's position in the Memorial on the 1954 Agreement Relating to a Special Maritime Frontier Zone. Peru asserted that the 1954 Agreement showed "no interest in or concern for the delimitation of lateral maritime boundaries between the three States."[808] As noted[809], this is impossible to reconcile with the fact that the preamble to that Agreement referred to "violations of the *maritime frontier* between adjacent States"[810] as the reason that had prompted the parties to create zones of tolerance on either side of their

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804 Memorial, para. 4.80 (emphasis added).

805 *Ibid*., para. 4.80.

806 *Ibid*., para. 4.74.

807 *Ibid*., para. 4.71.

808 *Ibid*., para. 4.88.

809 See paras 2.101-2.102 above.

810 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, first recital (emphasis added).

existing maritime boundaries. It is also impossible to reconcile with the reference to "*the parallel which constitutes a maritime boundary* between the two countries" in Article 1 of the agreement[811].

4.31. In its Memorial, Peru sought to explain the reference to a "maritime boundary" in Article 1 of the Agreement Relating to a Special Maritime Frontier Zone on the basis that it "referred only to *one* parallel between *two* countries (despite the fact that the 1954 Agreement on a Special [Maritime Frontier] Zone had *three* States Parties)"[812]. Immediately after this, Peru says in its Memorial that the supposed reference to one boundary only was "readily understandable in the context of the 1952 Declaration of Santiago, which it complemented."[813] Chile explained at paragraphs 2.202-2.205 of the Counter-Memorial, and at paragraphs 2.103-2.112 above that the term "two countries" in Article 1 refers to the two States on either side of the parallel of latitude constituting a maritime boundary between those two States. Nevertheless, the point here is the irreconcilable internal inconsistency in Peru's position. From Peru's Memorial, Chile understood that Peru's position was that there was a maritime boundary between Ecuador and Peru, but not between Peru and Chile. This understanding was confirmed by reference to an official communiqué issued by the Peruvian Ministry of Foreign Affairs in November 2005 which denied that there was a maritime boundary between Peru and Chile, and stated in connection with the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone that the "reference to the geographic parallel as a method of maritime delimitation is only applicable to the *Peru-Ecuador frontier* due to the existence of islands."[814]

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811 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, Art. 1 (emphasis added).

812 Memorial, para. 4.103 (emphasis in the original).

813 *Ibid*.

814 Official Communiqué RE/13-05 of 25 November 2005 by the Ministry of Foreign Affairs of Peru, **Annex 199 to the Counter-Memorial** (emphasis added).

4.32. On this basis, Chile's Counter-Memorial pointed out that the interpretation of Article IV of the Santiago Declaration advanced by Peru in its Memorial could not account for a complete maritime delimitation between Ecuador and Peru[815]. If Article IV of the Santiago Declaration were to delimit only Ecuador's insular zones as against Peru's continental zone, then the seaward portion of the continental maritime zones of Ecuador and Peru would remain undelimited. This was depicted on **Figure 7** of Chile's Counter-Memorial[816], and it is also depicted on **Figure 86**, which is based on Ecuadorean chart IOA 42. Yet both Ecuador and Peru have previously confirmed that they have a fully delimited maritime boundary[817].

4.33. The maritime boundary between Ecuador and Peru is fully delimited because the Santiago Declaration, as complemented by and authentically interpreted in the Agreement Relating to a Special Maritime Frontier Zone, delimits the continental maritime zones of Ecuador and Peru, as well as Ecuador's insular zones as against Peru's continental zone. If the Santiago Declaration has that effect as between Ecuador and Peru, it follows inexorably that it has the same effect as between Chile and Peru. When Chile highlighted this point in the Counter-Memorial of March 2010, the sequence of events described above at paragraphs 4.17-4.19 ensued, whereby Peru sought to appease Ecuador with a presidential letter, while at the same time, before the Court, disclaiming the Santiago Declaration as the foundation of the two States' undisputed maritime boundary.

4.34. An exchange of notes between Ecuador and Peru of 2 May 2011 now confirms that the joint understanding of Ecuador and Peru is that their maritime boundary extends to the full seaward extent of their respective 200M maritime

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815 See Counter-Memorial, paras 2.88-2.91.

816 Counter-Memorial, Vol. I, after p. 88.

817 For Ecuador, see footnote 770 above. For Peru, see, e.g., Note of 26 September 1969 from the Peruvian Embassy in Ecuador to the Ministry of Foreign Affairs of Ecuador, **Annex 79 to the Counter-Memorial**.

zones[818]. As a matter of incontrovertible geographical fact, the boundary line therefore cannot be dependent on the existence of islands, for the reasons explained above and depicted on **Figure 86**. Doubtless for that reason there is not a single reference to "islands" anywhere in the exchange of notes between Ecuador and Peru of May 2011. The bilateral "understanding" expressed by Ecuador and Peru about their complete maritime boundary is therefore not dependent on the existence or role of islands.

4.35. The exchange of notes includes an agreement that the notes would be registered with the United Nations jointly by the two countries. On the same day as the exchange of notes, 2 May 2011, ahead of the joint registration, Peru wrote unilaterally to the Secretary-General of the United Nations in connection with Ecuador's Nautical Chart IOA 42. Peru wrote ostensibly in response to Ecuador's note of 9 March 2011[819], under cover of which Ecuador had first deposited chart IOA 42 with the United Nations. Peru stated–

> "that it agrees that, *due to the presence of islands*, the geographic parallel passing through Boca de Capones — as depicted in the Nautical Chart of Ecuador IOA42 — is the maritime boundary between Peru and Ecuador, pursuant to point IV of the Declaration on the Maritime Zone, adopted in Santiago on 18 August 1952, and the other aspects agreed by Peru and Ecuador which are recorded in Notes of identical content exchanged today."[820] (Emphasis added.)

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818 See Note (GAB) No. 6-12-YY/01 of 2 May 2011 from the Minister of Foreign Affairs of Peru to the Minister of Foreign Affairs of Ecuador, **Annex 39**, para. 6; and Note No. 9428 GMRECI/CGJ/2011 of 2 May 2011 from the Minister of Foreign Affairs of Ecuador to the Minister of Foreign Affairs of Peru, **Annex 41**, para. 6.

819 See Letter No. 4998CGJ/GM/2011 of 9 March 2011 from the Minister of Foreign Affairs of Ecuador to the Secretary-General of the United Nations, **Annex 36**.

820 Note (GAB) No. 7-9-C-YY/01 of 2 May 2011 from the Minister of Foreign Affairs of Peru to the Secretary-General of the United Nations, **Annex 40** (emphasis added).

4.36. This gloss, referring to islands, is contained in a unilateral communication from Peru written on the same day as Peru reached a bilateral "understanding" with Ecuador that contained no reference to islands. Manifestly, Peru's unilateral assertion that the Santiago Declaration delimits the Ecuador-Peru maritime boundary "due to the presence of islands" does not represent Ecuador's position; and this is also clear from the historical record[821]. Peru's unilateral account is not a joint interpretative statement and is entitled to no weight. Peru felt compelled to issue such an account in an attempt to protect its position in these proceedings.

4.37. To summarize, by accepting Ecuador's depiction of the Ecuador-Peru maritime boundary in Ecuador's 2010 nautical chart, Peru has accepted the complete all-purpose maritime boundary consistently held by Ecuador to have been created by the Santiago Declaration, as stated on the face of the chart. Peru's recent posturing to try to present to the Court a different interpretation of its maritime boundary with Chile simply demonstrates Peru's awareness of the fundamental defects in its case. Peru's efforts to try to address those defects postdate Peru's Application to the Court — indeed they postdate Chile's Counter-Memorial — and it is obvious that the Court must have regard to the historical record, not to Peru's recent attempts to alter it.

821 On which see paras 4.4 *et seq*. above.

## CHAPTER V
## WIDESPREAD INTERNATIONAL ACKNOWLEDGEMENT OF THE PARTIES' AGREED BOUNDARY

5.1. Not only have Chile and Peru confirmed and enforced their agreed maritime boundary over several decades; there is also long-standing acknowledgment by the international community that the Chile-Peru maritime boundary has been delimited by agreement.

5.2. In the Counter-Memorial, Chile demonstrated the extensive acknowledgment of the settled maritime boundary between Chile and Peru by third States, the Secretariat of the United Nations, and numerous publicists[822]. This widespread acknowledgment has spanned a period of almost half a century. In its Reply, Peru purports curtly to dismiss all of this evidence as "unconvincing", on the ground that it "can have no effect on either the nature or the content of an instrument"[823].

5.3. Peru's argument misses the point. The widespread understanding in the international community about the existence and source of the Chile-Peru maritime boundary was not formed *ex nihilo*. It is grounded on the 1952 and 1954 agreements and the practice of the States parties in implementing and observing these agreements. Both Chile and Peru have consistently treated the parallel of latitude passing though the point at which their land boundary reaches the sea as their maritime boundary, and that understanding was consistently recorded as a juridical fact by the international community. Of course, Peru is correct that international acknowledgement could not create a boundary if the Parties had not agreed one. The significance of the widespread and uniform view of third States, international organizations and publicists is that it constitutes "important evidence of general opinion or repute"[824]. This evidence confirms

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822 See Counter-Memorial, paras 2.223 *et seq*.

823 Reply, para. 3.173.

824 *Territorial Sovereignty and Scope of the Dispute (Eritrea and Yemen)*, Award, 9 October 1998, *RIAA*, Vol. XXII, p. 295, para. 381.

that the settled understanding of the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone is that Chile and Peru have delimited their maritime boundary by agreement and that it is constituted by the parallel of latitude of the point where their land boundary reaches the sea.

5.4. As will be seen below, a survey of the literature on maritime delimitation by publicists, geographers and lawyers from various State agencies and international organizations shows a consensus that there is a maritime boundary in place between Chile and Peru. In retort, Peru calls in aid "Peruvian experts", who it says "have consistently sustained the absence of a maritime boundary treaty between Peru and Chile"[825]. These Peruvian experts do not assist Peru. Their writings are all recent and constitute a body of nationalist advocacy for the result that Peru now asks the Court to accept — although as will be seen Peru's present arguments are an eclectic mix of the various arguments that were mooted in Peru in recent years to argue against the existing boundary. As explained at paragraphs 5.24-5.33 below these recent writings represent a departure from prior Peruvian writings, notably in the 1950s and 1960s, which were indeed consistent with the acknowledgement of the boundary by Chile, Peru and the international community.

## Section 1. Third States

5.5. Several third States have acknowledged the settled maritime boundary between Chile and Peru. Some of these States have a special interest in the matter, notably because of their nationals' operations in the waters off Chile and Peru (and Ecuador) or because of the regional context of maritime delimitations. In its Counter-Memorial, Chile gave the examples of Colombia, the United States of America and the People's Republic of China[826].

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825 Reply, para. 3.179.

826 Counter-Memorial, paras 2.225-2.229.

5.6. In pleadings submitted to the Court, other third States have also relied on the maritime boundary between Chile and Peru, as evidence that latitudinal (non-equidistant) boundary lines can be appropriate for the continental shelf, the EEZ, or both. These States are Germany, Denmark, the Netherlands, the United States of America, Canada, Libya and Malta[827].

5.7. There are two further examples of such reliance by third States in inter-State litigation. In *Guyana v. Suriname*, as part of its case that the equidistance methodology had no status as an obligatory rule in customary international law, Suriname referred to the Santiago Declaration as an example of an agreed delimitation that did not follow an equidistance line:

> "The Santiago Declaration of August 18, 1952, confirmed and coordinated the claims of Chile, Peru, and Ecuador to a maritime zone, in Spanish, zona marítima, of at least 200 miles embracing the waters and seabed and subsoil. . . . The declaration specifies that the maritime zone. . .of another party may not extend beyond the parallel of latitude of the point when the land boundary between the respective parties reaches the sea. A supplemental fisheries agreement of December 4, 1954, between Chile, Peru, and Ecuador refers to the parallel of latitude extending from the terminus of the land frontier as the maritime boundary . . . It is, therefore, of particular interest that equidistance lines remain the exception, not the rule, with respect to lateral maritime boundaries of South American states that claimed 200-mile zones prior to the Third U.N. Conference on the Law of the Sea"[828].

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827 Counter-Memorial, paras 2.224 *et seq*.

828 *Guyana v. Suriname, Verbatim Record of the Hearing*, 14 December 2006, pp. 872 and 874.

5.8. In *Nicaragua v. Honduras*, Honduras referred to the "widespread use of lines of latitude or longitude" in the maritime delimitations of the world[829]. One of the examples it cited was the boundary delimitation between Chile, Peru and Ecuador effected by the Santiago Declaration, which it described as following "lines of latitude"[830].

## Section 2. International Organizations

5.9. In widely available publications of 1991[831] and 2000[832], the United Nations Secretariat cited the Santiago Declaration as an example of a maritime delimitation agreement, which used parallels of latitude as delimitation lines between the three States parties. These publications were discussed in the Counter-Memorial[833]. An earlier similar United Nations publication in 1987 had also listed the delimitation between Chile and Peru as an agreed delimitation effected by the Santiago Declaration[834]. One would have expected Peru, a member State of the United Nations, to have objected to this continued characterization if it disagreed with it. No objection is recorded.

5.10. In September 2000, when Chile deposited with the United Nations charts showing its maritime boundaries, in accordance with the relevant

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829 *Case Concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), I.C.J. Verbatim Record of the public sitting held on 16 March 2007, CR 2007/10*, p. 31, para. 150.

830 *Ibid*., p. 32, para. 154.

831 See United Nations Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea — Maritime Boundary Agreements (1942-1969)*, 1991, **Annex 241 to the Counter-Memorial**, pp. 87-88.

832 See United Nations Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea, *Handbook on the Delimitation of Maritime Boundaries*, 2000, **Annex 242 to the Counter-Memorial**, p. 57, para. 223.

833 See Counter-Memorial, paras 2.235-2.236.

834 See United Nations Office for Ocean Affairs and the Law of the Sea, *The Law of the Sea — Maritime Boundary Agreements (1970-1984)*, 1987, **Annex 130**, p. 297. These publications contain legal, technical and practical information to help Member States negotiate maritime-boundary delimitation agreements.

provisions of UNCLOS, Peru did protest Chile's depiction of its maritime boundary with Peru. Peru's understanding was that the Santiago Declaration did effect a maritime delimitation between Chile and Peru, but that this delimitation was not "specific" to maritime zones under UNCLOS[835]. At no time, however, has Peru suggested, let alone formally protested, that the United Nations was wrong to describe the Santiago Declaration as a delimitation agreement between Chile and Peru. Having submitted its 1955 Supreme Resolution for inclusion in the United Nations *Legislative Series*[836] and then jointly registered the Santiago Declaration as a treaty under Article 102 of the United Nations Charter[837], it obviously could not credibly do so. To recall, Peru's 1955 Supreme Resolution provided that: "In accordance with Clause IV of the Declaration of Santiago" the outer limit of Peru's maritime zone "may not extend beyond [the line] of the corresponding parallel at the point where the frontier of Peru reaches the sea."[838]

5.11. The CPPS, a regional international organization which was established "to achieve the goals set forth" in the Santiago Declaration, and of which Peru and Chile are founding members, has also acknowledged the agreed maritime boundary between Chile and Peru. In 1969, the CPPS published a *Collection of agreements and resolutions of the system of the South Pacific (1952-1969)*. One of the instruments contained in this *Collection* is Resolution VII adopted by the CPPS at the 1954 CPPS Meeting in Santiago[839]. This Resolution provided for the

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835 Statement by the Government of Peru concerning parallel 18° 21' 00", referred to by the Government of Chile as the maritime boundary between Chile and Peru, reproduced in United Nations, *Law of the Sea Information Circular*, No. 13, 2001, **Annex 78 to the Memorial**, para. 1.

836 See United Nations Legislative Series, *National Legislation and Treaties Relating to the Law of the Sea*, 1974, **Annex 164 to the Counter-Memorial**, pp. 27-28.

837 See Letter of 3 December 1973 from the Permanent Representatives of Peru and Chile and the Ecuadorean chargé d'affaires to the United Nations to the Secretary-General of the United Nations, **Annex 83 to the Counter-Memorial**.

838 1955 Supreme Resolution, **Annex 9 to the Memorial**, Art. 2. See also paras 3.3-3.10 above.

839 Shortly after it was concluded, the Santiago Declaration was criticized by some States as being contrary to general international law. The 1954 CPPS Meeting was convened in response to this mounting opposition to further develop the agreements

establishment of zones of tolerance on either side of the maritime boundary[840]. These were to be–

> "at twelve nautical miles from the coast, extending to a breadth of ten nautical miles on either side of the parallel which passes through the point of the coast that signals the boundary between the two countries."[841]

5.12. The preambular recitals in this Resolution indicate that the three member States considered it desirable to establish a zone of tolerance on either side of each maritime boundary between the "neighbouring states". There was no indication that this arrangement was somehow dependent on the presence of islands, or that it applied only between Ecuador and Peru. All three member States approved the Resolution[842].

5.13. This Resolution, which was recognized as being of a "permanent" character[843], was subsequently implemented, in almost identical terms, in the

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reached at the 1952 Conference and prepare recommendations (many of which were in the form of draft agreements) which would then be submitted to the 1954 Inter-State Conference to be held two months later in Lima. The 1954 Inter-State Conference would be attended by representatives of Chile, Peru and Ecuador. See Counter-Memorial, para. 2.186.

The index of this CPPS publication lists Resolution VII under the heading "Límite Internacional Marítimo" and provides that this Resolution recognized the parallel as the "Límite Internacional Marítimo". CPPS, *Compilación de Acuerdos y Resoluciones del Sistema Marítimo del Pacífico Sur (1952-1969)*, 1969, **Annex 120**, p. XVI.

840 See Counter-Memorial, paras 2.184-2.185.

841 Resolution VII, in CPPS, *Compilación de Acuerdos y Resoluciones del Sistema Marítimo del Pacífico Sur (1952-1969)*, 1969, **Annex 120**.

842 *Ibid*.

843 In the foreword to this *Compilación*, Dr. García Sayán of Peru, in his capacity as Secretary-General of the CPPS, wrote that this *Collection* included instruments which are "of a permanent nature or remain in force", **Annex 122**.

Agreement Relating to a Special Maritime Frontier Zone concluded in December 1954 by Chile, Ecuador and Peru[844]. Article 1 of that agreement reads as follows:

> "A special zone is hereby established, at a distance of 12 nautical miles from the coast, extending to a breadth of 10 nautical miles on either side of the *parallel which constitutes a maritime boundary between the two countries*."[845] (Emphasis added.)

A full account of the terms and effect of this agreement is set out at paragraphs 2.197-2.209 of the Counter-Memorial, and in summary form above, at paragraphs 2.99-2.122.

5.14. In his annual report for 1999, the Secretary-General of the CPPS, then an Ecuadorean diplomat, stated that Chile, Ecuador and Peru had agreed upon their maritime boundaries[846]. Peru responded that this statement "constitutes an interpretation of the scope of the [Agreement Relating to a Special Maritime Frontier Zone] that is not consistent with the juridical reality"[847], and asked for the Secretary-General's report to be withdrawn from circulation. Peru did not explain in its letter what the "juridical reality" was. Although Peru did provide this letter with its Reply, it omitted to refer to the response of the Secretary-General of the CPPS, which was immediate and unambiguous. It states that "[t]his General Secretariat has not formulated 'subjective appreciations on the content and scope' of the abovementioned legal instrument, nor has it made any 'interpretation of the scope of the Agreement that is not consistent with the juridical reality', which is why the withdrawal of the publication does not seem

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844 Resolution VII, in CPPS, *Compilación de Acuerdos y Resoluciones del Sistema Marítimo del Pacífico Sur (1952-1969)*, 1969, **Annex 120**.

845 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, Art. 1.

846 See CPPS, *Publicación de la Secretaría General 1999*, 1999, **Annex 131**, p. 42.

847 Fax F-330 of 27 January 2000 from the President of the Peruvian Section of the CPPS to the Secretary-General of the CPPS, **Annex 74 to the Reply**.

appropriate to me"[848]. The Secretary-General reiterated the treaty basis for the statement to which Peru had objected:

> "The book entitled 'Agreements and other documents 1952-1968', published by the General Secretariat of the CPPS, 'Lima, November 1968', [which] at pages 57 and 58, quotes the text of the Agreement Relating to a Special Maritime Frontier Zone, signed at Lima on 4 December 1954, the first article of which literally reads as follows:
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> > *'A Special Zone is hereby established, at a distance of 12 nautical miles from the coast, extending to a breadth of 10 nautical miles on either side of the parallel which constitutes the maritime boundary between the two countries'.*"[849]

5.15. The CPPS's understanding of the natural meaning of the Agreement Relating to a Special Maritime Frontier Zone was, therefore, that a maritime delimitation had been effected between the States parties. That understanding, which was conveyed to Peru on 28 January 2000 by the CPPS, has not, as far as Chile is aware, elicited a response from Peru.

## Section 3. Publicists

5.16. A plethora of publicists from various legal traditions of the world have acknowledged that there is a settled maritime boundary between Chile and Peru. In the Counter-Memorial, Chile cited works by the following 34 publicists on maritime-boundary issues: Salvador Lara, Valencia Rodríguez, Jiménez de Aréchaga, Reuter, Hodgson, Johnston, Valencia, Lucchini, Vœlckel, Ahnish, Jagota, Conforti, Prescott, Tanja, Labrecque, Bundy, Altuve – Febres Lores, Brown, Evans, Francalanci, Scovazzi, Kuen-Chen Fu, Yuan Gujie, Jayewardene,

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848 Note CPPS/SG/CG/2-081/2000 of 28 January 2000 from the Secretary-General of the CPPS to the President of the Peruvian Section of the CPPS, **Annex 30**.

849 *Ibid*.

Zhou Jian, Gao Jianjun, Marques Antunes, McDorman, Beauchamp, Nweihed, Orrego Vicuña, Pfirter de Armas, Rhee, and Zavala[850]. All these authors refer to the Santiago Declaration or the Agreement Relating to a Special Maritime Frontier Zone, or both, as the source of the maritime boundary between Chile and Peru, constituted by a parallel of latitude. This acknowledgment was made as recently as 2007 by Dr. Salvador Lara, the Ecuadorean plenipotentiary who signed the Agreement Relating to a Special Maritime Frontier Zone in 1954[851].

5.17. There are many additional examples — no less than 16 — of publicists from various legal traditions whose writings cite the Santiago Declaration or the Agreement Relating to a Special Maritime Frontier Zone, or both, as having established the maritime boundary between Chile and Peru[852]. The few dissents

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850 See Counter-Memorial, paras 2.237 *et seq*.

851 See Foreword by J. Salvador Lara in P. Goyes Arroyo, *Límite Marítimo: Ecuador-Perú*, 2007, **Annex 269 to the Counter-Memorial**, p. xiii.

852 See L. M. Alexander, "Baseline Delimitations and Maritime Boundaries", *Virginia Journal of International Law*, Vol. 23, 1983, **Annex 158**, p. 532; J. Attard, *The Exclusive Economic Zone in International Law*, 1987, **Annex 162**, p. xxxvi; J. Beer-Gabel, "Accords de délimitation" in Indemer (ed.), *Le processus de délimitation maritime étude d'un cas fictif*, *Colloque International*, 2004, **Annex 167**, p. 331; J. Beer-Gabel, "Variations sur la notion de frontière maritime", in Indemer (ed.), *Droit de la mer — Etudes dédiées au Doyen Claude-Albert Colliard*, 1992, **Annex 166**, p. 17; G. Blake, "World maritime boundary delimitation: the state of play" in G. Blake (ed.), *Maritime Boundaries and Ocean Resources*, 1987, **Annex 168**, pp. 3-4 (figure 1.1); M. Pratt (ed.), *Jane's Exclusive Economic Zones 2002-2003*, 2002, **Annex 182**, pp. 41, 91-92; G. Blake and R. Swarbrick, "Hydrocarbons and International Boundaries: A Global Overview", in G. Blake, M. Pratt, C. Schofield and J. A. Brown (eds), *Boundaries and Energy: Problems and Prospects*, 1998, **Annex 169**, p. 9 (map No. 2); P. J. Cook and C. M. Carleton, "Introduction", in P. J. Cook and C. M. Carleton (eds), *Continental Shelf Limits, The Scientific and Legal Interface*, 2000, **Annex 171**, p. 4 (figure 1.1); G. Despeux, *Droit de la délimitation maritime — Commentaire de quelques décisions plutoniennes*, 2000, **Annex 172**, p. 16; E. Gounaris, "The Delimitation of the Continental Shelf of Islands: Some Observations", *Revue Hellénique de droit international*, Vol. 33, 1980, **Annex 176**, p. 115; A. G. Oude Elferink, "Does Undisputed Title to a Maritime Zone Always Exclude its Delimitation: The Grey Area Issue", *International Journal of Marine and Coastal Law*, Vol. 13(2), 1998, **Annex 181**, p. 187; C. Lathrop, "The technical aspects of international maritime boundary, depiction and recovery", in *Ocean Development and International Law*, Vol. 28, 1997, **Annex 179**, p. 185; E. Collins Jr. and M. A. Rogoff, "The International Law of Maritime Boundary Delimitation", *Maine Law Review*, Vol. 34, 1982, **Annex 170**, p.

from this position are all from certain Peruvian authors, and all in recent years, as will be seen in the next Section.

## Section 4. Orthodox and Revisionist Peruvian Authors

5.18. In the Counter-Memorial, Chile gave the example of Professor Martínez de Pinillos, an eminent Peruvian geographer, who in 1956 expressly acknowledged that Peru's maritime boundary with Chile had been confirmed in the Agreement Relating to a Special Maritime Frontier Zone as being the parallel of latitude passing through the point where the Chile-Peru boundary reaches the sea[853].

5.19. In the Reply, Peru argues that Professor Martínez de Pinillos "did not represent the Government" and "did not give an accurate statement of the Government position"[854]. Yet in 1951 Professor Martínez de Pinillos had been charged by the Government with the preparation of the Official Text of Geography of Peru[855]. The Government of Peru must have considered that Professor Martínez de Pinillos had a proper understanding of Peru's existing boundaries. In 1952 Professor Martínez de Pinillos published a book entitled *Human Geography of Peru and the World*, which was an official text issued by Peru's Ministry of Education and which described Peru's maritime zone as covering 626,240 km$^2$ "from the parallels which limit our Coast to the north and

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18; E. W. Anderson, *International Boundaries — a Geopolitical Atlas*, 2003, **Annex 159**, p. 170; and M. Zahraa, "Prospective Anglo-Scottish Maritime Boundary Revisited", *European Journal of International Law*, Vol. 12(1), 2001, **Annex 189**, p. 82.

853 See Counter-Memorial, paras 2.213-2.214.

854 Reply, para. 4.12.

855 See Supreme Resolution No. 923 of 3 August 1951, **Annex 76**.

to the south, up to an imaginary line of 200 nautical miles to the West of the coast and which preserves its sinuosities."[856]

5.20. In its Reply, Peru also states that Chile failed to mention that two distinguished Peruvian diplomats and international lawyers, Dr. Ulloa and Dr. García Sayán, "never referred to the existence of maritime boundaries with Chile."[857] Peru stresses that Messrs Ulloa and García Sayán were the "most representative Peruvian figures" in the period when the Santiago Declaration was concluded[858]. Dr. Ulloa was the Peruvian delegate at the 1952 Santiago Conference, while Dr. García Sayán co-signed Decree No. 781 of 1947 and represented Peru at the First United Nations Conference on the Law of the Sea. Both of these gentlemen were delegates for Peru in the Second United Nations Conference on the Law of the Sea in 1960.

5.21. Peru is correct that Dr. Ulloa is not recorded as having discussed the issue of maritime boundaries outside his official role at the 1952 Santiago Conference. The 1956 speech and the 1959 article by Dr. Ulloa that are cited by Peru[859] simply do not address the subject of lateral delimitation at all. They do not include any reference to the maritime boundary between Peru and Ecuador, or to the limitation of the maritime zones generated by islands within 200M of the adjacent State's continental zone, which even on Peru's account was effected by the Santiago Declaration. Dr. Ulloa's writings and diplomatic efforts focused on defending the seaward extent of the maritime zone and the nature of Peru's

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856 P. Martínez de Pinillos, *Geografía Humana del Perú y del Mundo*, 1952, **Annex 180**, p. 196. The surface covered by Peru's maritime zone as calculated by Professor Martínez de Pinillos is identical to the surface calculated by Dr. García Sayán in 1955 (see **Figure 4 to the Counter-Memorial**, Vol. I, after p. 60) and by Dr. Vergaray Lara in 1962 (**Figure 5 to the Counter-Memorial**, Vol. I, after p. 60), both of whom understood Peru's maritime zone to be bounded by the parallels of latitude passing through the seaward termini of Peru's land boundaries with Ecuador and Chile.

857 Reply, para. 3.178.

858 *Ibid*.

859 *Ibid*.

rights therein. The lateral delimitation of the three States' maritime zones was not subject to challenges by third States, and thus did not feature in Dr. Ulloa's defence of the claim to zones of 200M or more. The two papers cited in the Reply cannot advance Peru's case.

5.22. As for Dr. García Sayán, he, too, concentrated on the seaward extent of Peru's zone, rather than lateral boundaries. In fact, this is a feature common to most analyses and writings in the 1950s, for the obvious reason that seaward projection was the controversial issue at the time. Nevertheless, so far as Dr. García Sayán's writings do deal with the lateral boundaries of Peru's maritime zone, they are entirely consistent with Chile's position and utterly inconsistent with Peru's. As noted at paragraph 1.30 above, in a book first published in 1955 (and again in 1966), Dr. García Sayán wrote that, pursuant to Peru's 1947 Supreme Decree, the 1952 Santiago Declaration and Peru's 1955 Supreme Resolution, Peru's maritime zone was limited by the geographic parallels of the point at which the land boundary reaches the sea:

> "It is appropriate to mention, among the acts confirming the rights declared in 1947, a recent Supreme Resolution issued by the Ministry of Foreign Affairs on 12 January 1955, in which it is specified that, in order to depict the 200-mile maritime zone referred to in the 1947 Supreme Decree and the 1952 Santiago Declaration in cartographic and geodesic works, the indicated zone 'is limited at sea by a line parallel to the Peruvian coast at a constant distance of 200 nautical miles from it', which will not go beyond the corresponding parallels 'at the point where the frontier of Peru reaches the sea'."[860]

5.23. Dr. García Sayán said in 1955 what Chile believed then and continues to believe today: the Santiago Declaration "confirm[ed]" the position prevailing

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[860] See E. García Sayán, *Notas sobre la Soberanía Marítima del Perú — Defensa de las 200 millas de mar peruano ante las recientes transgresiones*, 1955, **Annex 266 to the Counter-Memorial**, p. 28.

since Peru's 1947 Supreme Resolution[861]. Peru's maritime zone, as then proclaimed, was bounded by parallels of latitude. Neither Chile nor Ecuador objected to this claim. In the Santiago Declaration five years later, the three States parties addressed their continental maritime zones as abutting but not overlapping. Only islands had the potential to create zones overlapping with continental maritime zones, hence the need to address this matter in more specific terms in Article IV of the Santiago Declaration. This obviously contradicts Peru's present assertion that the use of the geographic parallels in the 1947 Supreme Decree has no relevance to the agreed maritime delimitation[862].

5.24. Dr. García Sayán's understanding that Peru's "maritime dominion" was bounded by two parallels was shared by many of the authors cited by Peru as the most distinguished Peruvian specialists on this matter, including Admiral Guillermo Faura, Professor Eduardo Ferrero Costa, Ambassador Juan Miguel Bákula, Ambassador Alfonso Arias-Schreiber and Dr. Marisol Agüero Colunga[863]. Peru now contends that these Peruvian authors "highlighted the absence of a maritime boundary treaty between Peru and Chile"[864]. In fact these authors do not state that there is no agreed maritime boundary between Chile and Peru. Rather, they put forth a view that the Chile-Peru maritime boundary *should not be* a parallel of latitude. They were pressing Peru's Government to advance a new interpretation of the 1952 and 1954 Agreements, against the boundary parallel. In doing so, they acknowledge, as they must, that in the practice of both Parties the 1952 and 1954 Agreements have been consistently understood as establishing a maritime boundary between Peru and Chile, which runs through the geographic parallel of the point at which the land boundary reaches the sea.

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861 E. García Sayán, *Notas sobre la Soberanía Marítima del Perú — Defensa de las 200 millas de mar peruano ante las recientes transgresiones*, 1955, **Annex 266 to the Counter-Memorial**, p. 28.

862 See Reply, paras 3.40 *et seq*.

863 *Ibid*., paras 3.177 and 3.180.

864 *Ibid*., para. 3.180.

5.25. Historically, the first of the Peruvian authors cited in the Reply to have questioned the 1952 and 1954 Agreements was Admiral Guillermo Faura. He did so in 1977 — 22 years after the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone were ratified by Peru, and nine years after Peru and Chile agreed to signal their boundary by alignment lighthouses[865].

5.26. Admiral Faura stated that "[t]he interest of the Nation above any other consideration, calls for the *correction* of our maritime delimitation."[866] This is a revealing sentence: one cannot correct what does not exist. Rather than supporting Peru's present position that there is no maritime boundary delimitation between Chile and Peru, Admiral Faura's text suggests that there was in fact such a delimitation and that the boundary should be changed[867]. President Jiménez de Aréchaga appears to have formed the same understanding of Admiral Faura's thesis[868].

5.27. Admiral Faura led other Peruvian authors to suggest that the maritime boundary with Chile should be revised. These authors have used a variety of arguments, at times inconsistent with each other, to seek to change the settled boundary in Peru's favour. Almost all of the authors who contributed to the revisionist literature start from the vague, and in any event legally wrong, premise that an agreement fixing a maritime boundary has to be somehow "specific", and assert that the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone did not meet the unarticulated standard of specificity. All these authors acknowledge, however, that in the practice of Chile

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865 See Chapter II, Section 4 above.

866 G. Faura Gaig, *El Mar Peruano y sus Límites*, 1977, **Annex 173**, p. 198 (emphasis added).

867 *Ibid*., pp. 187 and 193-194.

868 See E. Jiménez de Aréchaga, "Chile-Peru", in J. I. Charney and L. M. Alexander (eds), *International Maritime Boundaries, Vol. I*, 1993, **Annex 280 to the Counter-Memorial**, p. 795.

and Peru, the maritime frontier was established. Professor Ferrero Costa's writings are a good illustration in that respect, and the term "established" is from his work[869].

5.28. Similarly, Dr. Marisol Agüero Colunga, before she assumed her official position in Peru's litigation team, was also among the Peruvian authors who advocated for a revised interpretation of the 1952 and 1954 agreements. In 1990, Dr. Agüero Colunga submitted a thesis to Peru's Diplomatic Academy entitled *Peru's Maritime Delimitation with Ecuador and with Chile*. There, while she candidly states that the purpose of her work was to re-interpret the 1952 and 1954 agreements[870], she acknowledges that "in practice the separation of the Peruvian maritime dominion and that of the northern and southern neighbouring countries is effected by applying the method of the geographic parallel"[871]. Dr. Agüero Colunga nonetheless acknowledged that logic suggests that Article IV of the Santiago Declaration establishes a maritime boundary between the 200M maritime zones of the three States parties — not just between Peru and Ecuador, and not just in respect of insular zones[872]. She wrote:

> "[T]here is no indication as to whether the parallel had to be considered as the dividing line between the two hundred-mile maritime zones drawn from the continental territory of each one of the declaring States.

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869 See, e.g., E. Ferrero Costa, *El Nuevo Derecho del Mar – El Perú y las 200 Millas*, 1979, **Annex 174**, pp. 379-380.

870 See M. F. Agüero Colunga, *Delimitación Marítima del Perú con Ecuador y con Chile*, 1990, **Annex 156**, p. XV: The work "seeks to demonstrate that none of the instruments interpreted as maritime delimitation treaties is such".

871 M. F. Agüero Colunga, *Delimitación Marítima del Perú con Ecuador y con Chile*, 1990, **Annex 156**, p. XIII.

872 In 1990, Dr. Agüero Colunga concluded that: (a) the Santiago Declaration does not constitute an international treaty; (b) the Santiago Declaration does not define clear maritime boundaries between the signatory States; and (c) the Agreement Relating to a Special Maritime Frontier Zone is based on the mistaken view that the maritime boundaries with both Ecuador and Chile are determined by the geographic parallel of latitude. *Ibid*., p. 102. M. Agüero Colunga, *Consideraciones para la delimitación marítima del Perú*, 2001, **Annex 157**, pp. 271-272.

> The logical reasoning would suggest that, were one not to assume the latter, the reference to the islands would be nonsensical, as there would be no reason for their maritime zones to be limited in their extension by a line which is different from the one that could mark the separation between the maritime zones of each one of the States, drawn from the continental territory."[873]

5.29. More than a decade later, in 2001, the same author described as "hasty reasoning" precisely the approach that she had deemed "logical reasoning" in 1990[874]; and she espoused what in 1990 she had called a "nonsensical" conclusion.

5.30. In a book on Peru's foreign policy entitled *Between Reality and Utopia*, published several years after his memorandum calling for a renegotiation of the boundary on account of "new circumstances"[875], Ambassador Bákula, too, contributed to the revisionist literature. (By that time, Ambassador Bákula had retired from government service.) He is to be credited for the idea that Article 1 of the Agreement Relating to a Special Maritime Frontier Zone, which expressly refers to "the parallel which constitutes the maritime boundary", envisages after all a mere "dividing line"[876]. A further denigration of the 1954 Agreement he proposed is that the zone of tolerance "on either side of the maritime boundary between the two countries" under that agreement is "a sort of 'no one's waters'"[877]. This suggestion is eccentric, given that the 1954 Agreement calls for forbearance in exercising some of the plenary jurisdiction that each of the three States parties has in its respective maritime zone. The "special maritime frontier

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873 M. F. Agüero Colunga, *Delimitación Marítima del Perú con Ecuador y con Chile*, 1990, **Annex 156**, pp. 101-102.

874 M. Agüero Colunga, *Consideraciones para la delimitación marítima del Perú*, 2001, **Annex 157**, p. 265.

875 Bákula Memorandum, **Annex 76 to the Memorial**, second page (first paragraph).

876 J. M. Bákula, *Perú: Entre la Realidad y la Utopía – 180 Años de Política Exterior*, Vol. II, 2002, **Annex 164**, p. 1147.

877 *Ibid*.

zone" of forbearance remains under the "exclusive sovereignty and jurisdiction" of the relevant State party[878].

5.31. In fact, Ambassador Bákula developed an argument from his earlier memorandum of 1986, that there was no specific [*especial*] treaty on the subject of delimitation. On this predicate he went on to say that the tolerance zone under the 1954 Agreement is an "exceptional" or "restrictive norm", and for this reason the express references in that agreement to a "maritime boundary" should not be "understood in the light of a more extensive criterion"[879]. All these arguments are circular and counter-textual: they assume what has to be proved.

5.32. Another strand of thought in Peruvian revisionist writings sought to brush aside as mere "errors" the long-standing practice of Chile and Peru in observing the existing maritime boundary, although no evidence is given in support of this assertion. For example, in 2001, Ambassador Arias-Schreiber argued that the Agreement Relating to a Special Maritime Frontier Zone was based on "the *erroneous supposition* that the Santiago Declaration had adopted the line of the geographic parallel as a general rule applicable to the delimitation of the continental maritime zones"[880]. This was an "erroneous supposition" allegedly made by all three States parties to the 1954 Agreement in respect of their prior agreement, just two years earlier in Santiago. The 1968-1969 agreements, in that author's view, are born out of the same error[881]. One notes that Ambassador Arias-Schreiber did not express any of these views in an article

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878 Santiago Declaration, **Annex 47 to the Memorial**, Art. II.

879 J. M. Bákula, *Perú: Entre la Realidad y la Utopía – 180 Años de Política Exterior*, Vol. II, 2002, **Annex 164**, pp. 1148-1149.

880 A. Arias-Schreiber, "Delimitación de la frontera marítima entre Perú y Chile", *Revista Peruana de Derecho Internacional, Vol. LI*, January-June 2001, No. 117, **Annex 161**, p. 16 (emphasis added).

881 *Ibid*., p. 27.

he published in 1970 about Peru's maritime zone[882], in which he specifically referred to the Santiago Declaration.

5.33. Until it initiated these proceedings, Peru obviously disagreed with the advocacy in the revisionist writings outlined above. That is clear from Peru's practice subsequent to the 1952 and 1954 agreements, discussed in Chapter III above. What is more, the Peruvian authors on whose writings Peru relies in its Reply do not assist its case that there is no maritime boundary between Chile and Peru. Rather, these authors all advocate that the Chile-Peru maritime boundary *should not be* a parallel of latitude corresponding to the point where the land boundary meets the sea. Thus the significance of these writings is as follows:

*(a)* *None* of these writings takes the view that the 1952 and 1954 agreements are no longer valid and binding.

*(b)* *All* these writings acknowledge expressly that the 1952 and 1954 agreements have been understood to establish a boundary between Chile and Peru and applied in practice accordingly.

*(c)* *None* of these writings takes the view that the existing maritime boundary, which has been actually observed in the practice of the Parties, was anything but an all-purpose boundary.

*(d)* *All* these writings start from a belief that the existing boundary is unhelpful to Peru, and proceed to mount an argument on how the existing agreements could be unseated.

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882 See A. Arias-Schreiber, "Fundamentos de la Soberanía Marítima del Perú", *Revista de Derecho y Ciencias Políticas*, XXXIVth year, Nos I-II, 1970, **Annex 160**, p. 55.

## Section 5. Acknowledgment of the Chile-Peru Maritime Boundary in the *Limits in the Seas* Series of the United States Department of State

5.34. In the Reply, Peru seeks to diminish the widespread international acknowledgment of an agreed maritime boundary between Chile and Peru, asserting that there is in fact "no great body of third-party recognition"[883]. The reason for that, Peru argues, is that this recognition may be traced back to ". . .a single, erroneous, analysis by the Office of the Geographer of the United States Department of State"[884] in the *Limits in the Seas* serial publication[885]. There are two difficulties with this contention. First, this publication of the United States Department of State consistently recognized, in all relevant issues, published in the course of 21 years, that the Santiago Declaration effected a maritime delimitation between Chile and Peru using a parallel of latitude. A minor mistake in the notation of the precise latitude of the boundary parallel does not alter this. Second, there are numerous examples of international acknowledgment of the Chile-Peru maritime boundary that pre-date the first depiction of the Chile-Peru boundary in *Limits in the Seas*.

### A. *LIMITS IN THE SEAS* ACKNOWLEDGED THE EXISTENCE OF THE MARITIME BOUNDARY — 1979-2000

5.35. In the Counter-Memorial, Chile refers to the issue of *Limits in the Seas No. 86* which states that, pursuant to the Santiago Declaration, the boundary follows a parallel of latitude[886]. The relevant issue was first published in 1979[887].

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883 Reply, para. 4.73.

884 *Ibid*., paras 3.176 and 4.70.

885 This is a comprehensive collection of (notably) individual reports covering each country, containing information about maritime boundaries and maritime claims. It is extensively used by specialized practitioners and government officials.

886 See Counter-Memorial, para. 2.228. The *Limits in the Seas* series, now issued by the Office of Oceans Affairs, Bureau of Oceans and International Environmental and Scientific Affairs of the United States Department of State, "aims to set forth the basis of national arrangements for the measurement of marine areas by coastal States": <http://www.state.gov/g/oes/ocns/opa/convention/c16065.htm>.

Since then *Limits in the Seas* has confirmed the point on at least three subsequent occasions, in 1990[888], 1995[889], and 2000[890].

5.36. Peru's response is that the analysis by the Office of the Geographer of the United States Department of State is erroneous in that it contains "a distinctive numerical (perhaps typographical) error"[891]. This is correct: there is a minor error, which as Peru points out is "perhaps typographical". Rather than stating that the maritime boundary extends along the 18° **21**' 03" S parallel, it is said that "[t]he maritime boundary extends along the 18° **23**' 03" parallel of South latitude"[892]. That is the extent of the error. What is important for present purposes is the unequivocal, and correct, statement that the maritime boundary between Chile and Peru had been fully delimited by the Santiago Declaration, and that it "coincides with the parallel of latitude on which the Peru-Chile land boundary marker No. 1 has been placed." The analysis by the Office of the Geographer also refers to the work of the 1968-1969 Mixed Commission which "established two land alignment towers to aid mariners to establish their position with respect to the maritime boundary. . .[which were] placed on the 18° 23' 03" South parallel of latitude."

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887 See United States Department of State, Office of the Geographer, *Limits in the Seas, No. 86: Maritime Boundary: Chile-Peru*, July 1979, **Annex 216 to the Counter-Memorial**.

888 See United States Department of State, Office of Ocean Affairs, *Limits in the Seas, No. 108: Maritime Boundaries of the World*, 1st Revision, 30 November 1990, **Annex 219 to the Counter-Memorial**.

889 See United States Department of State, Office of Ocean Affairs, *Limits in the Sea, No. 36: National Claims to Maritime Jurisdictions*, 7th Revision, 11 January 1995, **Annex 220 to the Counter-Memorial**.

890 See United States Department of State, Office of Ocean Affairs, *Limits in the Seas, No. 36: National Claims to Maritime Jurisdictions*, 8th Revision, 25 May 2000, **Annex 222 to the Counter-Memorial**.

891 Reply, para. 4.72.

892 See United States Department of State, Office of the Geographer, *Limits in the Seas, No. 86: Maritime Boundary: Chile-Peru*, July 1979, **Annex 216 to the Counter-Memorial**, p. 2 (emphasis added).

5.37. For 21 years Peru stood idle, proffering no correction to a clear statement, made in four publications issued in the course of that period, that there was a maritime boundary with Chile and it followed the parallel of latitude of Hito No. 1. There would have been every reason for Peru to react, given that *Limits in the Seas* is a publication widely consulted by States, international organizations, and professional advisors, and indeed a publication often relied upon in proceedings before the Court — as in fact the issues describing the Chile-Peru boundary have been relied upon by several States in such proceedings[893].

## B. WIDESPREAD ACKNOWLEDGMENT BEFORE *LIMITS IN THE SEAS NO. 86* (1979)

5.38. Contrary to Peru's assertion, publicists and third States had acknowledged that the Santiago Declaration effected a delimitation between Chile and Peru before the relevant *Limits in the Seas* issue was first published, in 1979, addressing the maritime boundary between Chile and Peru. Chile has been able to identify three publications by specialist authors, in the period 1975-1977[894]. Third States had also acknowledged that there is an agreed maritime boundary between Chile and Peru, which follows a parallel of latitude, before *Limits in the Seas No. 86*. There are two examples.

5.39. First, in the *North Sea Continental Shelf* cases, all three States involved in the proceedings acknowledged that the maritime boundary between Chile and Peru had been effected by the Santiago Declaration and that the

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893 See paras 5.6-5.8 above.

894 See, J. R. V. Prescott, *The Political Geography of the Oceans*, 1975, **Annex 304 to the Counter-Memorial**, p. 103; F. M. Pfirter de Armas, "¿Perú: la marcha hacia el oeste?", in R. Zacklin (ed.), *El Derecho del Mar en Evolución: La Contribución de los Países Americanos*, 1975, **Annex 303 to the Counter-Memorial**, p. 303; and R. Hodgson and R. Smith, "Boundaries of the Economic Zone", in E. Miles and J. K. Gamble Jr. (eds), *Law of the Sea: Conference Outcomes and Problems of Implementation*, 1977, **Annex 271 to the Counter-Memorial**, p. 190.

maritime boundary followed a parallel of latitude[895]. This case was decided by the Court in 1969, ten years before *Limits in the Seas No. 86*.

5.40. Secondly, in 1975, four years before it joined the CPPS, Colombia stated its understanding that the Santiago Declaration constituted a delimitation agreement between Chile, Peru and Ecuador. During the ratification process of the delimitation agreement that Colombia concluded with Ecuador in 1975, the Colombian Foreign Minister stated:

> "This system of delimitation [using parallels of geographic latitude], used frequently by several States, was in particular chosen by the three signatory countries of the Santiago Declaration for delimiting their respective maritime jurisdictions. . . . It is evident that, in the Pacific Ocean, this line [of parallel] constitutes a clear, fair and simple frontier, which meets the interests of the two countries adequately"[896].

5.41. This statement was made four years before the *Limits in the Seas* issue under discussion[897].

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895 Para. 5.6 above and Counter-Memorial, paras 2.231 and 2.163.

896 Statement of Reasons of September 1975 by the Minister of Foreign Affairs of Colombia before the Colombian Congress in respect of the Bill to approve the Agreement between Colombia and Ecuador concerning Delimitation of Marine and Submarine Areas and Maritime Co-operation, **Annex 214 to the Counter-Memorial**. Also see the Presentation of 15 October 1975 by Senator Fernández before Colombia's Congressional Commission on International Relations and National Defence of the Bill approving the Colombia-Ecuador delimitation agreement before the Congressional Commission on International Relations and National Defence, **Annex 215 to the Counter-Memorial**.

897 See further para. 1.20(k) above on the "Statement of Reasons" given by the Government of Colombia in Congress.

## CHAPTER VI
## STABILITY OF BOUNDARIES AND THE SETTLED PRACTICE

6.1. UNCLOS expressly confirms that maritime boundaries established by agreement prior to UNCLOS are to be respected:

> "Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone [or the continental shelf] shall be determined in accordance with the provisions of that agreement."[898]

6.2. The rules of customary international law on treaty interpretation, and their application to the legal and factual issues in this case, are discussed more fully in Chapter IV of Chile's Counter-Memorial. That discussion demonstrated that the Parties have delimited their maritime boundary by agreement. Thus, this case ultimately turns on the fundamental rule of *pacta sunt servanda*. The Santiago Declaration is, as all treaties, "binding upon the parties to it and must be performed by them in good faith"[899]. The same is true for the Agreement Relating to a Special Maritime Frontier Zone, which from the outset was conceived and expressed to be an "integral part" of the Santiago Declaration[900].

6.3. The stability and permanence of boundaries is evident in Article 62(2)(a) of the Vienna Convention, which provides that: "A fundamental change of circumstance may not be invoked as a ground for terminating or withdrawing from a treaty if the treaty establishes a boundary."

6.4. In conjunction with these specific rules concerning respect for boundary treaties, the Parties' maritime boundary is subject to the more general

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898 UNCLOS, Arts 74(4) and 83(4).

899 Vienna Convention, Art. 26.

900 Agreement Relating to a Special Maritime Frontier Zone, **Annex 50 to the Memorial**, Art. 4.

customary international law principle of stability of boundaries[901]. In asking the Court to redraw the Parties' maritime boundary, and adopt a boundary at variance with the existing one, Peru asks the Court to act in a manner directly contrary to the venerable authority of the *Grisbådarna* arbitration, which was the first maritime boundary delimitation case, and in which it was held that–

> "dans le droit des gens, c'est un principe bien établi, qu'il faut s'abstenir autant que possible de modifier l'état des choses existant de fait et depuis longtemps".[902]

6.5. The Court has also made clear, in the *Aegean Sea Continental Shelf* case, that "the same element of stability and permanence" applies to maritime boundaries as to land boundaries[903]. Once the boundary between two States has been settled, subsequent unilateral opposition to it by a change of position by one party, or the unilateral creation of a dispute in respect of it, does not undermine the boundary's continuing validity[904].

6.6. The principle of stability of boundaries confers on a boundary a juridical existence independent of the agreement that created that boundary[905]. As the Court said in the *Libya/Chad* case, a settled boundary has "a legal life of its own" that is not dependent on its basis in a treaty[906]. In the present case, the

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901 The principle of stability of boundaries is also discussed at paras 4.70-4.80 of the Counter-Memorial.

902 *The Grisbådarna Case (Norway v. Sweden)*, Award, 23 October 1909, *RIAA*, Vol. XI, p. 161.

903 See *Aegean Sea Continental Shelf (Greece v. Turkey), Judgment, I.C.J. Reports 1978*, pp. 35-36, para. 85.

904 See *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment, I.C.J. Reports 1962*, p. 34.

905 See *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 37, paras 72-73; *Territorial and Maritime Dispute (Nicaragua v. Colombia), Preliminary Objections, Judgment*, *I.C.J. Reports 2007,* 13 December 2007, p. 861, para. 89.

906 *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 37, para. 72.

independent juridical existence of the Parties' maritime boundary is demonstrated by numerous examples of State practice, a selection of which are listed in summary form below.

## Section 1. Bilateral Conduct Demonstrating the Parties' Agreement that the Boundary had been Settled

6.7. The Parties' long-standing agreement that their maritime boundary has been settled is evident from the following examples of their bilateral conduct in the 1950s and 1960s:

*(a)* In the 1954 Minutes the delegates of Chile, Ecuador and Peru agreed to memorialize, in lieu of adding a provision to a related treaty that they were in the process of negotiating, their existing agreement "that the three countries deemed the matter on the dividing line of the jurisdictional waters settled and that said line was the parallel starting at the point at which the land frontier between both countries reaches the sea."[907] The Peruvian delegate specified "that this agreement was already established in the Conference of Santiago"[908].

*(b)* In the 1954 Minutes the three States also recorded the following agreement concerning Article 1 of the Agreement Relating to a Special Maritime Frontier Zone (which they went on to conclude the following day):

> "[T]he concept already declared in Santiago that the parallel starting at the boundary point on the coast constitutes the maritime boundary between the

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907 Minutes of the First Session of Commission I of the 1954 Inter-State Conference, 2 December 1954 at 10.00 a.m., **Annex 38 to the Counter-Memorial**, p. 3.

908 *Ibid*., p. 4.

neighbouring signatory countries, was incorporated into this article."[909]

*(c)* In 1968 and 1969 the Parties engaged in a series of consensual steps to signal the parallel of latitude constituting their pre-existing maritime boundary. In doing so, they confirmed the existence and course of that boundary. These steps included the following:

(i) In the 1968 Minutes the delegations from the two Parties recorded that their joint task was "to materialise the parallel of the maritime frontier originating at Boundary Marker number one"[910] and that in order to do so they would place one lighthouse on the seaward side of Hito No. 1, and a second 1,800 metres inland in Chilean territory, "in the direction of the parallel of the maritime frontier"[911].

(ii) In an exchange of notes in August 1968, the Parties approved the 1968 Minutes. The Peruvian note was the first in the exchange and recorded that the 1968 Minutes had been signed "by the representatives of both countries in relation to the installation of leading marks to materialise the parallel of the maritime frontier"[912]. Chile's reply reflected the language used by both States in the 1968 Minutes and by Peru in its note. Chile referred to "the installation of

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909 Minutes of the Second Session of Commission I of the 1954 Inter-State Conference, 3 December 1954 at 10.00 a.m., **Annex 39 to the Counter-Memorial**, p. 7.

910 1968 Minutes, **Annex 59 to the Memorial**.

911 *Ibid*.

912 Note No. (J) 6-4/43 of 5 August 1968 from the Secretary-General of the Ministry of Foreign Affairs of Peru (signing for the Foreign Minister) to the Chilean chargé d'affaires in Peru, **Annex 74 to the Memorial**.

the leading marks visible from the sea to materialise the parallel of the maritime frontier originating at Boundary Marker No. 1"[913].

(iii) In a 1969 note Peru informed Chile of the composition of its delegation to the 1968-1969 Peru-Chile Mixed Commission. In doing so, Peru recorded that the task of the Mixed Commission was–

> "to verify the position of boundary marker number one and fix the definitive location of the two alignment towers that were to signal the maritime boundary"[914].

(iv) The 1969 Act recorded that:

> "The undersigned Representatives of Chile and 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, located on the seashore*, constituted a Mixed Commission, in the city of Arica, on the nineteenth of August, nineteen sixty-nine."[915]

(v) The 1969 Act also recorded that "the Mixed Commission met at Boundary Marker number one" where, "[t]he parallel having been determined, the two points at which the front and rear alignment towers shall be erected were physically marked on this line"[916]. The

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

914 Note No. 5-4-M/76 of 13 August 1969 from the Peruvian Embassy in Chile to the Ministry of Foreign Affairs of Chile, **Annex 78 to the Counter-Memorial**.

915 1969 Act, **Annex 6 to the Counter-Memorial** (emphasis added).

916 *Ibid*.

lighthouses to signal the parallel of the maritime boundary were subsequently constructed on those points and began functioning in 1972[917].

## Section 2. Peru's Enforcement of the Agreed Boundary

6.8. That Peru has considered itself to have agreed its maritime boundary with Chile is evident from the following examples where Peru has enforced that boundary:

*(a)* In March 1966 the Peruvian Navy corvette *Diez Canseco* responded to perceived transgressions of the Chile-Peru maritime boundary by two Chilean fishing vessels by firing warning shots from its canon. Chile wrote to Peru on the basis that the fishing vessels had been "south of the boundary with Peru"[918] and thus requested an explanation from Peru as to why its Navy had "trespassed over the boundary and open[ed] fire in Chilean waters"[919]. Peru responded that the Chilean vessels were "north of the frontier line"[920]. Peru informed Chile of a series of coordinates for the Peruvian corvette, and stated the distances that those points were "from the frontier line"[921]. Peru provided coordinates and distances on the basis of its understanding that the maritime boundary that it was defending was the parallel of latitude 18° 21' S. Peru assured Chile that when a Chilean vessel that it had pursued "was crossing the frontier line", Peru's Navy had "abandoned

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917 See Notices to Mariners Nos 57 and 152 of 1972 issued by the Hydrographic Institute of the Chilean Navy, **Annexes 129 and 130 to the Counter-Memorial**.

918 Cable No. 48 of 23 March 1966 from the Ministry of Foreign Affairs of Chile to the Chilean Embassy in Peru, **Annex 122 to the Counter-Memorial**.

919 *Ibid*.

920 Memorandum of 8 June 1966 from the Peruvian Embassy in Chile to the Ministry of Foreign Affairs of Chile, **Annex 75 to the Counter-Memorial**.

921 *Ibid*.

the pursuit"[922]. Peru thus concluded that its Navy "did at no time cross the frontier line"[923]. Chile requested no further explanation from Peru. Both States proceeded on the explicit basis that they had a maritime boundary in place, which followed the parallel of latitude 18° 21' S, and that it should not be transgressed by Navy or commercial vessels from the State on the other side of the boundary parallel.

*(b)* In 1989 the Harbour Master of Ilo, an officer of the Peruvian Navy, issued decisions in two administrative proceedings brought against Chilean vessels, fining them 20,000 U.S. Dollars for having carried out "fishing activities in waters under Peruvian maritime dominion"[924]. These decisions record that the vessels were "seized at a point located 1.5 miles from the frontier line of the Republic of Chile, in the jurisdictional waters of Peru"[925]. They state that the vessels were "intercepted and captured" at a location with coordinates 18° 19' S and 70° 39' W by a Peruvian Navy vessel "1.5 miles away from the dividing line of the maritime frontier"[926]. The "frontier" referred to was the line that delimited, to use the language of the Peruvian Regulations, the "waters under Peruvian maritime dominion"[927], which

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922 Memorandum of 8 June 1966 from the Peruvian Embassy in Chile to the Ministry of Foreign Affairs of Chile, **Annex 75 to the Counter-Memorial**.

923 *Ibid*.

924 Resolution No. 006-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 176 to the Counter-Memorial**; and Resolution No. 007-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 177 to the Counter-Memorial**.

925 Resolution No. 006-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 176 to the Counter-Memorial**; and Resolution No. 007-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 177 to the Counter-Memorial**.

926 Resolution No. 006-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 176 to the Counter-Memorial**; and Resolution No. 007-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 177 to the Counter-Memorial**.

927 Quoted in Resolution No. 006-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 176 to the Counter-Memorial**; and Resolution No. 007-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 177 to the Counter-Memorial**.

the Harbour Master also described as "the jurisdictional waters of Peru"[928].

*(c)* Peru requires every kind of vessel, whatever the purpose of its journey, to report to Peruvian authorities its entry into and exit from Peru's maritime dominion[929]. Peru requires such a report to be made upon crossing the parallel of its maritime boundary with Chile[930]. The shipping records discussed above at paragraphs 3.59-3.63 demonstrate that vessels do in fact make the reports that Peru requires when crossing Peru's boundary parallels with Chile and Ecuador.

*(d)* Peru also uses the parallel of its maritime boundary with Chile as the southern limit of the 200M of airspace corresponding to Peru's "maritime dominion", in which airspace Peru purports to be sovereign[931], and also as the southern limit of the area in which it grants authorization to lay submarine cables on the continental shelf[932].

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928 Resolution No. 006-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 176 to the Counter-Memorial**; and Resolution No. 007-89-M of 5 June 1989 by the Harbour Master of Ilo, **Annex 177 to the Counter-Memorial**.

929 See Directorial Resolution No. 0313-94/DCG of 23 September 1994 of the Directorate-General of Captaincies and Coastguard of Peru, approving the System of Information on Position and Security in the Maritime Dominion of Peru, **Annex 180 to the Counter-Memorial**, Annex (3), First Case; and **Annex 94**, Annex (4), Third Case.

930 See, e.g., Directorate of Hydrography and Navigation of the Navy, *Derrotero de la Costa del Perú*, 2nd edn, 1988, **Annex 175 to the Counter-Memorial**, p. 12, section 1.34; Directorial Resolution No. 347-91-DC/MGP of 20 December 1991 of the Directorate-General of Captaincies and Coastguard of Peru, **Annex 178 to the Counter-Memorial**, Annex (3); Directorial Resolution No. 0313-94/DCG of 23 September 1994 of the Directorate-General of Captaincies and Coastguard of Peru, approving the System of Information on Position and Security in the Maritime Dominion of Peru, **Annex 180 to the Counter-Memorial**, Appendix 1 to Annex (4).

931 See paras 3.75-3.77 above.

932 See paras 3.99-3.101 above.

## Section 3. Peru's Confirmation of the Agreed Boundary

6.9. Peru has confirmed in numerous instruments of its domestic legal system that its maritime boundary with Chile has been settled. The following instances are worth reiterating:

*(a)* In January 1955 Peru issued a Supreme Resolution–

> "to specify in cartographic and geodesic work the manner of determining the Peruvian maritime zone of 200 miles referred to in the Supreme Decree of 1 August 1947 and the Joint Declaration signed in Santiago on 18 August 1952 by Peru, Chile and Ecuador"[933].

The Supreme Resolution provided that the outer limit of Peru's 200M claim "shall be limited at sea by a line parallel to the Peruvian coast and at a constant distance of 200 nautical miles from it"[934]. Concerning the lateral limits of Peru's maritime zone, it stated that: "In accordance with clause 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 reaches the sea."[935] Peru provided this instrument to the United Nations for inclusion in the United Nations *Legislative Series*[936].

*(b)* Peru took a further step to ensure that its maritime zone was correctly depicted in cartographic and geodesic work. Pursuant to Peruvian Supreme Decree No. 570 of 1957, which requires Peru's Foreign Ministry to approve any "geographic or cartographic publication

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933 1955 Supreme Resolution, **Annex 9 to the Memorial**, preambular recital.

934 *Ibid*., Art. 1.

935 *Ibid*., Art. 2.

936 See United Nations Legislative Series, *National Legislation and Treaties Relating to the Law of the Sea*, 1974, **Annex 164 to the Counter-Memorial**, pp. 27-28.

referring to or representing the frontier zones of the Nation"[937], Peru has formally authorized a number of maps depicting the Parties' maritime boundary, which is the southern limit of Peru's "maritime dominion", as a parallel of latitude[938]. Resolutions of Peru's Foreign Ministry authorizing these publications confirm that in them "Peru's international boundaries have been drawn in an acceptable way"[939]. Pursuant to Peru's Ministerial Resolution No. 458 of 1961, while such ministerial approval implies no official approval of "concepts and commentaries", it does confer official approval on the correctness of the "delimitation of Peru's bordering zones"[940].

*(c)* In 1976, as part of a proposed exchange of territory between Chile and Bolivia, Chile consulted Peru about a proposed cession of territory to Bolivia. This cession would have allowed Bolivia direct access to the sea in the form of a corridor between Peru and Chile. Chile was obliged not to cede any territory to Bolivia without having reached agreement on such cession with Peru[941]. Chile informed Peru that the cession would include certain land territory and "the maritime territory between the parallels of the extreme points of the coast that will be ceded (territorial sea, economic zone and continental shelf)."[942] Peru responded with a different proposal on the territorial aspects of the arrangement, and an exchange of territory ultimately was not agreed.

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937 Supreme Decree No. 570 of 5 July 1957, **Annex 11 to the Memorial**.

938 See **Figures 37-41 to the Counter-Memorial**, Vol. I, after p. 254 and paras 3.146-3.151 of the Counter-Memorial.

939 Reproduced in **Figures 37 and 38 to the Counter-Memorial**, Vol. I, after p. 254.

940 Ministerial Resolution No. 458 of 28 April 1961, issued by the Ministry of Foreign Affairs of Peru, **Annex 9 to the Reply**. See further paras 3.33-3.41 above.

941 Supplementary Protocol to the Treaty of Lima, **Annex 45 to the Memorial**, Art. 1.

942 Note No. 686 of 19 December 1975 from the Chilean Minister of Foreign Affairs to the Bolivian Ambassador to Chile, reproduced in Ministry of Foreign Affairs of Chile, *Historia de las Negociaciones Chileno-Bolivianas: 1975-1978*, 1978, **Annex 25**, p. 44.

The significant point for present purposes is that Peru made absolutely no objection to the proposed use of the actual maritime boundary between Chile and Peru as the maritime boundary between Bolivia and Peru. Peru accepted that it had no right to any maritime space to the south of that boundary parallel.

*(d)* Chile depicted its maritime boundary with Peru on official charts published in 1992[943], 1994[944] and 1998[945]. The 1992 and 1994 charts attracted no protest from Peru when they were published, or subsequently, such that Peru must be regarded as having acquiesced in their depiction of the agreed maritime boundary. In 2000, when Chile deposited with the United Nations the 1998 chart showing its maritime boundaries, for the first time, Peru did protest Chile's depiction of a maritime boundary with Peru. The basis of Peru's objection in 2000 was not that there was no agreed maritime boundary operating between the Parties. It was that there was no maritime delimitation treaty "specific" to "the relevant rules of international law"[946], i.e., to the maritime zones recognized by UNCLOS as reflective of customary international law[947].

*(e)* In the years for which records are available, being 1984 and 1994-2009, Chile captured more than 300 Peruvian fishing vessels found

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943 **Figure 7.3 to the Memorial**, Vol. IV, p. 113.

944 **Figure 5.24 to the Memorial**, Vol. IV, p. 79.

945 **Figure 5.25 to the Memorial**, Vol. IV, p. 81.

946 Statement by the Government of Peru concerning parallel 18° 21' 00", referred to by the Government of Chile as the maritime boundary between Chile and Peru, reproduced in United Nations, *Law of the Sea Information Circular*, No. 13 (2001), **Annex 78 to the Memorial**, para. 1.

947 And see, similarly, the discussion of the Bákula Memorandum at paras 3.106-3.113 above.

south of the boundary parallel[948]. Chile notified Peru of most of these incidents, identifying the coordinates of the capture and the distance from the "international political boundary" where it occurred[949]. Only in September 2004 did Peru begin to attempt to reserve its position[950]. In stark contrast to this recent reservation, in 1995 both States had jointly memorialized a procedure by which captured vessels would be escorted by the Navy or Coastguard of the capturing State to the boundary, where they would be released[951].

## Section 4. The Settled Practice Demonstrates the Existence of a Maritime Boundary, not a "Fisheries Policing Line"

6.10. Peru acknowledges the use of the parallel of latitude by the Parties as a line dividing their respective areas of exercise of jurisdiction. It also acknowledges that the parallel in use is the one passing through Hito No. 1. The real dispute between the Parties is about the character of that dividing line. Peru says it was, and still is, "the fisheries policing line"[952]. Peru asks the Court to cast aside that existing arrangement and replace it with an equidistance boundary applicable for all purposes. In doing so it asks the Court to unsettle something that, on Peru's own case, has been settled for a long time, and something which has served both Parties well. Peru acknowledges in its Reply that: "The use of

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948 See Counter-Memorial, para. 3.96, the Appendix and **Figure 28 to the Counter-Memorial**, Vol. I, after p. 224.

949 See Counter-Memorial, para. 3.96 and the Appendix.

950 See Letter No. 8-10-B-C/389-2004 of 30 September 2004 from the Consul General of Peru in Arica to the Maritime Governor of Arica, **Annex 104 to the Counter-Memorial**.

951 See "Procedure for the exchange of Chilean or Peruvian fishing boats, apprehended undertaking fishing activities to the north or to the south of the Special Maritime Frontier Zone (S.M.F.Z.), between the Harbour Master of Ilo and the Maritime Governor of Arica", Annex A to the Final Minutes of Understanding of the Fourth Bilateral Meeting between the Commanders of the Frontier Naval Zones of Chile and Peru on 13 July 1995, **Annex 21 to the Counter-Memorial**; and see Counter-Memorial, paras 3.100-3.105.

952 Reply, para. 4.45.

the line of latitude, discernible by small, ill-equipped fishing vessels, was not only an obvious solution: it was the *only* practical solution."[953] Peru does not explain the basis on which it now asks the Court to cast aside something that the two States agreed to be "the only practical solution".

6.11. Chile acknowledges that fisheries are the primary resource and reason for traffic in the area at issue in this case. Although for most relevant practical purposes in that area a jurisdictional fisheries line following the parallel of latitude would serve the same function as a maritime boundary, the fact that the agreed maritime boundary is of primary significance for fisheries does not relegate it to a jurisdictional fisheries line.

6.12. Peru has not produced a single document created prior to this dispute in which either Party referred to the parallel as "the fisheries policing line". Nor has Peru produced a single document in which either Party indicated that the agreed use of the parallel of latitude was somehow to be limited in time. Peru's assertions that the Agreement Relating to a Special Maritime Frontier Zone and the establishment of the lighthouses signalling the parallel of Hito No. 1 were simply practical arrangements that involved no acknowledgement of a maritime boundary are nowhere accompanied by any explanation of why those arrangements were arrived at in the first place or why they should now be at an end.

6.13. The fisheries industry in the Chilean city of Arica has developed in reliance on the agreed boundary. The port of Arica lies just 15 kilometres from the land boundary with Peru. The maritime area claimed by Peru roughly extends between the latitudes of the cities of Arica and Iquique (located some 200 km to the south of Arica, also on the coast).

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[953] Reply, para. 4.18 (emphasis in original).

6.14. The fishing industry at the ports of Arica and Iquique is significant in national terms, second only to four other larger ports close to Santiago and Concepción, the two largest cities in the country. Table 1, at **Figure 87**, shows the catch unloaded (in tonnes) at these ports for the period 1991-2007 and the percentage of the unloaded catch in the national context[954].

6.15. Table 2, at **Figure 87**, indicates the number of fishing vessels registered at the ports of Arica and Iquique and the total number of fishing vessels registered nationally[955]. The table also shows the aggregate tonnage of each category of fishing vessels at each of the two ports. A significant portion of the fishing vessels below 400 tonnes in the country is registered at the ports of Iquique and Arica, showing the importance of small- and medium-sized fishing vessels for the economy of the northern part of Chile.

6.16. Altering the settled maritime boundary would not just be contrary to the principle of stability of boundaries as an abstract principle of international law. It would materially diminish the fishing grounds available to industrial and artisanal fishing enterprises that have established themselves in Arica and Iquique in reliance on the settled boundary. This will obviously affect the livelihood of the significant part of the local population who are directly engaged in fishing, and also those who are engaged in related fisheries activities, such as storage, resale, transportation, etc.

6.17. As explained in the Counter-Memorial, Arica is not only a significant commercial port and fishing centre, it is also a port which serves the interests of Peru and Bolivia and provides key facilities to those countries[956]. For example,

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954 Data extracted from the Directorate-General of the Maritime Territory and Merchant Navy, *Maritime-Historical Statistic Reports*, **Annex 74**, Sections 8.1 (1991-1993) and 10.1 (1994-2007).

955 *Ibid*., Section 9.2. The table covers fishing vessels above 50 tonnes of gross registered tonnage (***TRG***).

956 See Counter-Memorial, para. 1.20.

Arica is the main transit port for Bolivian cargo. Peru also enjoys extensive port facilities in Arica, which serves as the port of the Peruvian city of Tacna, some 50 km to the north. And, pursuant to its obligations under the Treaty of Lima, Chile constructed in Arica a building for the Peruvian Customs office and a terminal station for the railway to Tacna[957]. Thus, Arica serves Peru's economic interests too, being the major port near the land boundary between the Parties.

6.18. Peru's various attempts to diminish the significance of the agreed maritime boundary are *post-hoc* assertions created for the purpose of this litigation in an attempt to convince the Court that the boundary is not really a boundary, and that the Court should draw one afresh using a method different from the one on which the Parties agreed in 1952 and which they confirmed in 1954. There is absolutely no evidence in the contemporaneous documentary record for such assertions. By contrast, the Parties have referred to the *límite marítimo*, *frontera marítima*, or *límite político internacional* to describe the parallel of latitude of the point where the land boundary reaches the sea. They have done so notably during the joint signalling work of 1968-1969[958], in diplomatic correspondence complaining about transgressions of the boundary by fishing vessels[959] and when enforcing the boundary parallel by capturing fishing vessels of the other Party and escorting them back to the parallel[960]. There are numerous more instances of references to "jurisdictional waters" and "territorial waters" of the Parties.

6.19. Chile has been forthcoming in these proceedings before the Court, to the extent of producing an extract from its Navy's Rules of Engagement from the early 1990s, which is naturally a document classified as secret. That extract is

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957 Treaty of Lima, **Annex 45 to the Memorial**, Art. 5.

958 See **Annexes 59, 74 and 75 to the Memorial** and **Annexes 6, 78, 80 and 165 to the Counter-Memorial**.

959 See **Annexes 69, 74 and 76 to the Memorial**.

960 See **Annexes 88, 89, 95 and 98 to the Counter-Memorial** and **Annex 93** to the Rejoinder.

**Table 1: Catch unloaded (in tonnes) at the ports of Arica and Iquique, compared with national total catch, for the period 1991-2007**

| | 1991 | | 1992 | | 1993 | | 1994 | | 1995 | | 1996 | | 1997 | | 1998 | | 1999 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ARICA | 766,438 | 12.4% | 723,391 | 10.9% | 636,300 | 10.3% | N/A | N/A | 569,519 | 7.3% | 476,602 | 6.6% | 532,501 | 8.4% | 62,809 | 1.6% | 391,340 | 7.0% |
| IQUIQUE | 681,564 | 11.1% | 909,712 | 13.7% | 839,517 | 13.6% | 1,058,502 | 13.2% | 899,131 | 11.5% | 545,786 | 7.5% | 849,359 | 13.3% | 103,065 | 2.7% | 585,784 | 10.5% |
| **NATIONAL TOTAL** | **6,166,081** | **100.0%** | **6,628,365** | **100%** | **6,190,648** | **100%** | **8,021,043** | **100%** | **7,825,696** | **100%** | **7,231,679** | **100%** | **6,365,535** | **100%** | **3,824,231** | **100%** | **5,599,849** | **100%** |

| | 2000 | | 2001 | | 2002 | | 2003 | | 2004 | | 2005 | | 2006 | | 2007 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ARICA | 393,002 | 7.9% | 193,085 | 4.1% | 355,878 | 6.9% | 242,465 | 5.4% | 377,572 | 6.1% | 320,470 | 5.9% | 214,552 | 4.1% | 254,726 | 5.6% |
| IQUIQUE | 705,731 | 14.2% | 629,158 | 13.5% | 925,765 | 18.0% | 483,386 | 10.7% | 898,047 | 14.5% | 725,863 | 13.7% | 520,703 | 9.8% | 648,635 | 14.3% |
| **NATIONAL TOTAL** | **4,972,263** | **100%** | **4,663,433** | **100%** | **5,132,741** | **100%** | **4,528,513** | **100%** | **6,204,344** | **100%** | **5,477,248** | **100%** | **5,297,525** | **100%** | **4,528,712** | **100%** |

**Table 2: Number of fishing vessels registered at the ports of Arica and Iquique and the total number of fishing vessels registered nationally, for the period 1994-2007**

| | | | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **GRT * Less than 100** | Arica | No of vessels | 17 | 16 | 16 | 12 | 5 | 6 | 9 | 8 | 7 | 7 | 7 | 4 | 6 | 3 |
| | | Aggregate tonnage | 1,389.83 | 1,305.75 | 1,305.75 | 931 | 401.68 | 479.6 | 703.11 | 632 | 564 | 564 | 564 | 328 | 509 | 236 |
| | Iquique | No of vessels | 20 | 20 | 15 | 7 | 7 | 6 | | | | | | 1 | 2 | 1 |
| | | Aggregate tonnage | 1,588.50 | 1,592.50 | 1,200.83 | 583 | 587.41 | 497.49 | | | | | | 82 | 164 | 82 |
| | **NATIONAL TOTAL** | No of vessels | **114** | **112** | **99** | **84** | **74** | **72** | **62** | **59** | **52** | **46** | **46** | **47** | **47** | **40** |
| | | Aggregate tonnage | **8,947.57** | **8,819.37** | **7,826.37** | **6,682** | **5,964.90** | **5,803.43** | **4,978.67** | **4,701** | **4,167** | **3,650** | **3,650** | **3,756** | **3,824** | **3,247** |
| **GRT 101-400** | Arica | No of vessels | 38 | 42 | 42 | 35 | 36 | 36 | 36 | 31 | 56 | 51 | 39 | 30 | 29 | 26 |
| | | Aggregate tonnage | 8,170.68 | 9,138.22 | 9,338.15 | 8,418 | 8,496.58 | 8,504.14 | 8,375.96 | 7,232 | 13,332 | 11,729 | 8,696 | 7,026 | 6,832 | 5,946 |
| | Iquique | No of vessels | 56 | 46 | 45 | 40 | 39 | 40 | 45 | 44 | 22 | 19 | 41 | 31 | 41 | 40 |
| | | Aggregate tonnage | 11,656.28 | 9,269.14 | 9,152.68 | 8,527 | 8,599.52 | 8,870.55 | 10,447.93 | 10,517 | 5,081 | 4,424 | 10,039 | 7,329 | 10,107 | 10,376 |
| | **NATIONAL TOTAL** | No of vessels | **242** | **236** | **223** | **205** | **188** | **185** | **176** | **167** | **159** | **150** | **150** | **149** | **140** | **116** |
| | | Aggregate tonnage | **49,885.83** | **48,977.66** | **46,388.17** | **43,232** | **40,592.74** | **40,170.32** | **38,769.36** | **36,884** | **35,234** | **33,318** | **33,318** | **33,261** | **31,503** | **26,558** |
| **GRT 401-800** | Arica | No of vessels | 2 | 2 | 2 | 2 | 2 | 3 | 2 | 2 | 14 | 9 | 6 | 2 | 1 | 2 |
| | | Aggregate tonnage | 975 | 975 | 975 | 975 | 975 | 1,530.94 | 975 | 975 | 6,904 | 4,383 | 3,013 | 975 | 512 | 975 |
| | Iquique | No of vessels | 20 | 18 | 17 | 15 | 16 | 15 | 15 | 15 | 1 | 1 | 11 | 16 | 17 | 17 |
| | | Aggregate tonnage | 10,530.52 | 9,321.34 | 8,698.46 | 7,474 | 8,086.46 | 7,474.46 | 7,474.46 | 7,474 | 545 | 463 | 5,650 | 8,058 | 8,377 | 8,405 |
| | **NATIONAL TOTAL** | No of vessels | **147** | **148** | **146** | **137** | **136** | **136** | **132** | **131** | **122** | **123** | **123** | **119** | **117** | **105** |
| | | Aggregate tonnage | **86,447.08** | **87,598.38** | **86,107.80** | **80,854** | **80,407.94** | **80,317.10** | **77,418.32** | **77,003** | **72,384** | **72.561** | **72,561** | **70,417** | **69,222** | **62,088** |
| **GRT 801 or more** | Arica | No of vessels | | | | | | | | | | | | | | |
| | | Aggregate tonnage | | | | | | | | | | | | | | |
| | Iquique | No of vessels | | | | | | | | | | | | | | |
| | | Aggregate tonnage | | | | | | | | | | | | | | |
| | **NATIONAL TOTAL** | No of vessels | **39** | **44** | **43** | **53** | **55** | **55** | **54** | **53** | **54** | **52** | **52** | **54** | **57** | **57** |
| | | Aggregate tonnage | **50,518.16** | **55,175.66** | **60,237.90** | **69,300** | **71,438.02** | **71,543.90** | **70,189.40** | **67,529** | **68,822** | **62,124** | **62,124** | **69,301** | **71,909** | **71,629** |

* GRT: gross registered tonnage

reproduced as **Figure 75**[961], and demonstrates unequivocally Chile's internal view of the Parties' maritime boundary prior to Peru's present claims. The fact that the boundary parallel is set forth in the Navy's Rules of Engagement clearly demonstrates that there is an all-purpose maritime boundary, respected and enforced as such by the armed forces of the two States, not some kind of functional or provisional line. The inference to be drawn from Peru's failure to produce equivalent evidence is that the documents held by Peru contradict its present arguments[962].

6.20. Demonstrating the significant benefits to both Parties of the stability of their longstanding maritime boundary, there has not been a single conflict between the Parties' Navies concerning the existence or location of the boundary since it was agreed in 1952.

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961 Also see **Figure 20 to the Counter-Memorial**, Vol. I, after p. 176.

962 For an example of a publicly known position of the Peruvian Navy contradicting Peru's position in the present case, see para. 2.49 above.

## CHAPTER VII
## THE *ALTA MAR* AREA: PERU'S ALTERNATIVE SUBMISSION

7.1. Chapter VI of Peru's Reply addresses the claim to what Peru calls "the outer triangle". Chile calls it the "*alta mar* area" to denote its high seas status[963].

7.2. Peru claims the *alta mar* area in its second submission, by which it asks the Court to declare that: "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"[964]. The area claimed by Peru can be seen on **Figures 2.4** and **7.1** of Peru's Memorial[965]. The *alta mar* area is also depicted on **Figure 2** of Chile's Counter-Memorial[966]. As those illustrations show, Peru's second submission proceeds on the basis that the Court will find that the maritime boundary between the Parties is constituted by a parallel of latitude 200M in length. Peru asks the Court to order that the area which is "[b]eyond the point where the common maritime

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963 In academic writings areas of this kind have been referred to as "the grey area". See D. Colson, "The Legal Regime of Maritime Boundary Agreements" in J. I. Charney and L. M. Alexander (eds), *International Maritime Boundaries*, Vol. I, 1993, pp. 67-69; A. G. Oude Elferink, "Does Undisputed Title to a Maritime Zone Always Exclude its Delimitation: The Grey Area Issue", *International Journal of Marine and Coastal Law*, Vol. 13(2), 1998, p. 143; and L. H. Legault and B. Hankey, "From Sea to Seabed: The Single Maritime Boundary in the Gulf of Maine Case", *American Journal of International Law*, Vol. 79, 1985, pp. 987-988.

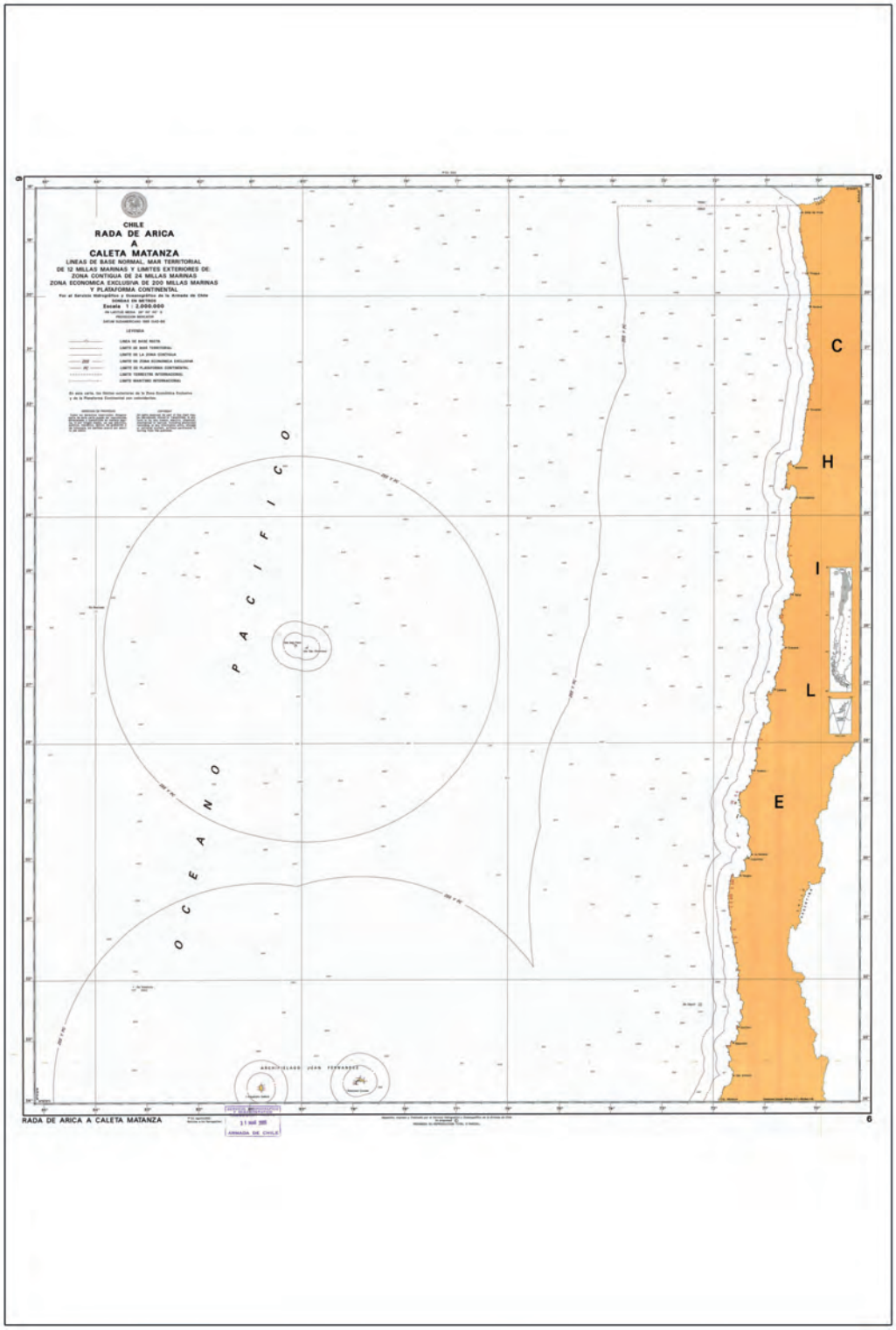
964 Reply, p. 331.

965 It is not clear on what basis Peru determined the outer limit of the *alta mar* area in the depictions on **Figures 2.4 and 7.1 to the Memorial** (Vol. IV, pp. 15 and 109) and it is not clear that its calculation takes account of the full extent of Chile's 200M maritime zones measured from the basepoints submitted by Chile to the United Nations on 29 September 2000: United Nations, Communication M.Z.N.37.2000.LOS (Maritime Zone Notification) from the Secretary-General of the United Nations, entitled "Deposit by Chile of charts showing normal and straight baselines, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf", 29 September 2000, **Annex 132**; Chart No. 6 of the Hydrographic and Oceanographic Service of the Chilean Navy entitled "Rada de Arica a Caleta Matanza", 1st edn, August 2000, **Figure 88**.

966 Counter-Memorial, Vol. I, after p. 8.

**Figure 88**

Chile's Chart No.6 of 2000 showing normal baselines, the 12M territorial sea and outer limits of the 24M contiguous zone, the 200M EEZ and the continental shelf in northern Chile




Source: Hydrographic and Oceanographic Service of the Navy (SHOA), Chart No. 6, *Rada de Arica a Caleta Matanza*, 1:2,000,000, 1st edn, 2000

border ends", but within 200M of Peru's coast measured using an envelope of arcs of circles, is to become part of Peru's "maritime dominion".

7.3. Since this submission by Peru proceeds on the basis that the maritime boundary between the Parties is a parallel of latitude up to a point 200M from the coast, Chile regards this as a submission in the alternative to Peru's primary submission, which is that there is no boundary at all and an equidistant line is to be drawn by the Court. In paragraphs 6.4-6.10 of its Reply, Peru ties itself in knots asserting that its two submissions are not really alternative, but adds, in the alternative, that even if they are, there is nothing inadmissible about alternative arguments. Chile has never suggested that a submission in the alternative is inadmissible. Chile simply considers it important that Peru make clear to the respondent State and to the Court precisely what Peru, as the applicant State, is asking for and in what circumstances.

7.4. The size of the *alta mar* area is significant. Peru claims that it is an area of 28,356 $km^2$ [967]. Peru seeks to enlist the Court to appropriate to Peru's "maritime dominion" this area in which the entire international community currently has equal high-seas rights. Peru's submission with respect to the *alta mar* seeks an attribution of maritime spaces.

7.5. Before addressing the detail of the arguments concerning the *alta mar* area, an initial general observation is appropriate. Chile has no maritime zone or other maritime claim in the *alta mar* area. If Peru is as confident in its position as its pleadings suggest, why is Peru even asking the Court for a declaration of its rights? On Peru's approach, it is entitled to exercise that jurisdiction without anyone's permission to do so. Yet Peru's practice has been consistent: it has honoured the parallel of the maritime boundary as a limit to the entire length of its "maritime dominion", beyond the outer limit of Chile's EEZ and continental shelf. Hence Peru has not produced a single example of ever having exercised

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[967] See Memorial, para. 7.23.

any jurisdiction in the *alta mar* area during the more than half century of practice under the Santiago Declaration. It purported to identify two examples in the Memorial[968], but when Chile pointed out that these incidents in fact occurred off Peru's northern coast, nowhere near the *alta mar* area[969], Peru fell silent in its Reply. In truth, the practice is to the opposite effect. There are numerous examples, discussed below, of Peru's regarding the Hito No. 1 parallel as the southern limit of its "maritime dominion" in the area seawards of the extremity of Chile's 200M maritime zone. Peru's practice is consistent with the practice of Chile and of third States: the *alta mar* is uniformly acknowledged to be high seas.

7.6. The reason for Peru's request to the Court in its second submission is that Peru knows that exercising jurisdiction in the *alta mar* area would involve a considerable change to the freedom for ships and aircraft of all States to use that area. In an area in which all members of the international community currently have equal rights and may exercise all high-seas freedoms, Peru cannot make that change unless it can persuade the Court to change the *status quo*.

7.7. In its Memorial, Peru sought to put its claim to the *alta mar* area on the footing that Chile's presencial sea impeded Peru's exercise of its sovereign rights[970]. Chile explained in its Counter-Memorial that the presencial sea has nothing to do with the issue before the Court, since the presencial sea is a label that attaches to Chile's international-law compliant activities in the high seas[971]. The question is whether the *alta mar* area now claimed by Peru is high seas or not; and if it is, as Chile submits, whether it is to remain so. In its Reply, Peru accepts that this is the relevant question. Peru states that the presencial sea

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968 Memorial, para. 7.33.

969 See Counter-Memorial, para. 2.116.

970 See Memorial, Chapter VII.

971 See Counter-Memorial, paras 2.126-2.134.

"might be sustainable as far as the high seas are concerned"[972], and objects to it solely on the basis that it is "incompatible with the basic rights that the coastal State — Peru in the present case — enjoys in maritime areas that lie within 200 nautical miles from its coasts"[973]. These "basic rights" that Peru claims to possess are, of course, subject to agreement. By agreement between Chile, Ecuador and Peru, the *alta mar* area is high seas. Peru cannot now breach that agreement and appropriate the *alta mar*.

## Section 1. The Parallel was agreed as a Lateral Limit regardless of the Seaward Extent of either State's Maritime Zone

7.8. In Article II of the Santiago Declaration, Chile, Ecuador and Peru claimed "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"[974]. The Parties allowed for further seaward extension of their maritime claims, beyond 200M, by the use of the words *minimum distance*. The 1952 Minutes record that the Chilean delegate to the Santiago Conference "deemed it appropriate to clearly state the extent afforded to article II" and that he "asked the delegates of Peru and Ecuador to express whether they agreed with Chile's standpoint."[975] That standpoint was that any one of the States parties may "as a sovereign State, extend its maritime zone beyond the 200 miles at the time and for the length it deems necessary or appropriate without the need to obtain permission or consent from the other signatory countries."[976] The delegates of

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[972] Reply, para. 6.16.

[973] *Ibid*.

[974] Santiago Declaration, **Annex 47 to the Memorial**, Art. II.

[975] Minutes of the Second Session of the Legal Affairs Commission of the 1952 Conference, 12 August 1952 at 4.00 p.m., **Annex 34 to the Counter-Memorial**, p. 3.

[976] *Ibid*.

both Peru and Ecuador confirmed their agreement with this statement[977]. Following this agreement, the 1952 Minutes record, as noted above, that:

> "The motion to keep special record of the foregoing statements in the Minutes of this Commission's Sessions was unanimously agreed, in order to serve as a true record of the extent, sense and accuracy of interpretation of this part of the Declaration. It was also agreed to provide each delegation with an authenticated copy of these Minutes so that it is attached to the declaration for the purposes each country may deem appropriate."[978]

7.9. This agreed, authentic interpretation concerning the ability of each State party to the Santiago Declaration unilaterally to extend its claim beyond 200M is an "agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty"[979] which, pursuant to Article 31(2)(a) of the Vienna Convention, must be taken into account in the interpretation of the Santiago Declaration.

7.10. That the Santiago Declaration envisaged potential further unilateral extension of each State party's maritime zone reflected the approach of both Chile and Peru in their 1947 proclamations, which was that they were entitled to extend their claim beyond 200M if that was later found to be necessary for the control and protection of natural resources[980].

7.11. However far seaward any State's claim was extended under the Santiago Declaration, such a claim was to be laterally limited by "the parallel at

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977 Minutes of the Second Session of the Legal Affairs Commission of the 1952 Conference, 12 August 1952 at 4.00 p.m., **Annex 34 to the Counter-Memorial**, p. 3.

978 *Ibid*.

979 Vienna Convention, Art. 31(2)(a).

980 See 1947 Chilean Declaration, **Annex 27 to the Memorial**, Arts 2 and 3; 1947 Peruvian Supreme Decree, **Annex 6 to the Memorial**, Arts 2 and 3; and Reply para. 3.36.

the point at which the land frontier of the States concerned reaches the sea"[981]. Thus a full, definitive delimitation was accomplished under the Santiago Declaration. Any other interpretation would mean that further unilaterally-decided seaward extension by one State could have wrapped around the outer limit of the maritime zone of the adjacent State, preventing that second State from later exercising its own right under the Santiago Declaration to extend its own claim further seaward "without the need to obtain permission or consent from the other signatory countries"[982], or creating a dispute between the two States if both extended their claims. As President Jiménez de Aréchaga observed, in the Santiago Declaration the approach of the three States was that they each had a "direct and linear projection"[983] into the sea. This projection remained limited by parallels no matter how far seaward it would extend. Any area within a State's "direct and linear projection" could potentially be claimed by it, but if it was not claimed by that State, then that area would be high seas. An adjacent State could never claim such an area.

7.12. Peru now counters that:

> "It is unsustainable to allege nowadays that the 1952 Declaration of Santiago allows a participating State to extend its maritime zones as far as it deems suitable. The modern law of the sea. . .strictly limits any State's entitlements to sovereign rights in the exclusive economic zone to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured."[984]

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981 Santiago Declaration, **Annex 47 to the Memorial**, Art. IV.

982 Minutes of the Second Session of the Legal Affairs Commission of the 1952 Conference, 12 August 1952 at 4.00 p.m., **Annex 34 to the Counter-Memorial**, p. 3.

983 E. Jiménez de Aréchaga, "Chile-Peru", in J. I. Charney and L. M. Alexander (eds), *International Maritime Boundaries, Vol. I*, 1993, **Annex 280 to the Counter-Memorial**, p. 794.

984 Reply, para. 6.27.

7.13. As an UNCLOS State (which neither Peru nor Ecuador is), Chile concurs with that submission, subject to Chile's claim to an extended continental shelf where it exists[985]. But Peru's argument misses the point. True, the parallel of latitude was agreed as a definitive lateral limit to the maritime claims of the States parties to the Santiago Declaration because in 1952 the maximum seaward claim that a State could or would make under international law was an open issue so far as the three States parties were concerned. The three States were leaving open the possibility of claims extending further seaward than 200M. The fact that since then the international law of the sea has developed to accept 200M zones does not mean that the agreement on the full, definitive delimitation of lateral limits reached in 1952, prior to that development, should now be interpreted as having changed too. Each State party's agreement to limit its claims (however measured and whatever their breadth) at the boundary parallel was not conditional on the adjacent State's actual desire or ability to extend its own maritime zone. Each State party limited all its potential claims at the boundary parallel, once and for all.

7.14. Peru urges upon the Court that it interpret the Santiago Declaration in a dynamic fashion, i.e., that the Declaration "be interpreted and applied within the framework of the entire legal system prevailing at the time of interpretation"[986]. Such an approach would be appropriate in circumstances such as those of the *South West Africa* and *Western Sahara* advisory opinions, which Peru cites as authority for it[987]. These cases concerned, respectively, the interpretation of provisions of the Covenant of the League of Nations concerning

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985 In May 2009 Chile submitted to the United Nations preliminary information indicative of the outer limits of the extended continental shelf beyond 200M from Chile's baselines, in the Taitao area; the Easter Island and Salas y Gómez area; the Juan Fernández area; and the San Félix and San Ambrosia area. None of these areas is in the vicinity of the maritime boundary with Peru. See Government of Chile, "Preliminary Information Indicative of the outer limits of the Continental Shelf", May 2009, available at <www.un.org/Depts/los/clcs_new/commission_submissions>, in particular the map at p. 21.

986 Reply, para. 6.26.

987 *Ibid*.

mandates and principles of decolonization. By contrast, in the context of international boundaries, where stability is the paramount rule[988], a treaty limiting the physical space in which a State is entitled to exercise sovereign rights and jurisdiction cannot, absent explicit agreement to the contrary, be interpreted in a dynamic or evolutive manner. In the context of an agreement on boundaries, to do otherwise would amount to impermissible revision of the agreement.

7.15. The basic rule is that any dynamic or evolutive interpretation of any treaty must be grounded in the common intention of the parties[989]. Here, the common intention of the Parties was to establish a lateral limit irrespective of the seaward extent of the Parties' maritime zones. That intention is reflected in the clear and unambiguous terms of Article IV of the Santiago Declaration, read together with Article II, and in the joint, authentic interpretation of the Santiago Declaration recorded in the 1952 Minutes. The common intention of the Parties precludes an evolutive interpretation of the Santiago Declaration which would allow Peru to exercise sovereignty and jurisdiction in the area south of the parallel. In 1952, Peru agreed on a maritime zone that was vast by the standards of the time. It was based on the claim that Peru had originally made in 1947. In 1952, Peru also agreed not to exercise any sovereignty or jurisdiction in the area south of the parallel. The Parties' agreement on lateral limits was made in conformity with international law. The fact that since then the international law of the sea has changed, and in a separate development Peru has unilaterally chosen to change its method of measuring the outer limit of its "maritime dominion", does not mean that the agreement on lateral limits concluded in 1952, prior to either of these developments, should now be interpreted as having changed too.

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988 See paras 6.1-6.6 above; and Counter-Memorial, paras 4.70-4.80.

989 See *Case Concerning the Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua), I.C.J. Judgment, 13 July 2009*, para. 64.

## Section 2. Peru's Unilateral Change in measuring its Seaward Projection cannot change the Agreed Southern Limit of its "Maritime Dominion"

7.16. The parties to the Santiago Declaration envisaged claims further seaward than 200M. In the end the Parties did not make such claims (again, subject to Chile's claim for an extended continental shelf where it exists), but Peru's claim was extended further seaward by a different mechanism: by unilateral change of the method by which Peru measured the outer limit of the 200M.

7.17. As already noted, from 1947 Peru's maritime zone was a form of *tracé parallèle* following the sinuosities of the coastline[990]. That was the extant Peruvian claim at the time of the Santiago Declaration in 1952. In 2005, Peru specified that thenceforth it would measure the outer limit of its "maritime dominion" using an envelope of arcs of circles[991]. Insofar as Peru's recent choice concerns the area to the north of the parallel of latitude of Hito No. 1, Chile naturally does not object to it[992]. What Chile does object to is Peru's attempt to use a unilateral change to the method of measurement of the outer limit of its maritime zone to unsettle the lateral limit of that zone which has been agreed by the Parties.

7.18. In its Memorial and in its Reply, Peru repeatedly asserts that customary international law, as reflected in Articles 57 and 76 of UNCLOS, confers on Peru exclusive "legal entitlements to a maritime area up to a distance of 200 nautical miles"[993]. Peru describes this as "the crucial point"[994]. Its

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990 See para. 2.46 above.

991 See para. 2.50 above.

992 See Counter-Memorial, para. 2.123.

993 Reply, para. 6.2. Also see Reply, paras 6.17-6.19, 6.23-6.24 and 6.34; and Memorial, paras 7.3, 7.23, 7.25 and 7.38.

994 Reply, para. 6.2.

arguments concerning the *alta mar* hinge on it. The point is unavailing for one simple reason. Any theoretical distance-based entitlement that any State may have under customary international law is subject to contrary agreement (or a unilateral commitment to the same effect). No matter how Peru may unilaterally decide to measure the outer limit of its 200M "maritime dominion", now or in the future, any Peruvian claim to any area south of the parallel of latitude passing through the point where the land boundary reaches the sea is precluded by the definitive lateral limitation on prospective maritime claims agreed by the Parties in 1952 and confirmed in 1954.

7.19. Now that Peru does use the envelope-of-arcs-of-circles method, the outer limit of its "maritime dominion" in the area north of the parallel of Hito No. 1 has extended a further 166.4M seawards along that parallel, as depicted on **Figure 2** of Chile's Counter-Memorial. The change in measurement has thus brought a significant new portion of ocean space (approximately 190,026 $km^2$) within Peru's "maritime dominion", north of the parallel of latitude constituting the maritime boundary.

7.20. A diagram that forms part of an academic article upon which Peru relies in its Reply illustrates the relationship between the *alta mar* area, the parallel of latitude of the Chile-Peru maritime boundary, and the different outer limits of Peru's maritime zone produced by a *tracé parallèle* compared to an envelope of arcs of circles. In the chapter of its Reply dealing with the *alta mar* area, Peru relies on an article by Dr. Elferink of the Netherlands Institute for the Law of the Sea at Utrecht University[995]. Peru omitted to state that Dr. Elferink specifically discussed at pages 149-152 and 187 of his article the *alta mar* area under consideration in this case, indicating that the Santiago Declaration read with Peru's 1947 Supreme Decree created an *alta mar* area that is indeed high seas. Dr. Elferink's diagram is reproduced here as **Figure 89**.

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[995] A. G. Oude Elferink, "Does Undisputed Title to a Maritime Zone Always Exclude its Delimitation: The Grey Area Issue" *International Journal of Marine and Coastal Law*, Vol. 13(2), 1998, p. 143, cited at Reply, p. 311, footnote 592.

## Section 3. Ecuador's Straight Baseline and an *Alta Mar* Area

7.21. The understanding of the parties to the Santiago Declaration that the parallels of latitude constituting the lateral limits of their maritime zones continued to limit those zones, even where there was no abutting claim by the adjacent State, may also be seen from the consequences of Ecuador's adoption in 1971 of a straight baseline joining Puntilla Santa Elena and "the geographic parallel constituting the maritime frontier with Peru"[996].

7.22. When in 1971 Ecuador adopted a straight-baseline system including a baseline drawn from a continental headland to the intersection of its maritime boundary with Peru, the effect was to project its 200M territorial sea further seaward, into an area that was previously high seas. The area in question was within a 200M envelope of arcs of circles from Peru's coast, but on the northern side of the parallel constituting the maritime boundary with Ecuador. It was an area of 1,152 km$^2$. Peru now claims that by 1971 it was measuring its maritime projection using an envelope of arcs of circles[997]. If that were true, and if the argument that Peru makes in the present case about the *alta mar* area were true, then the 1,152 km$^2$ of high seas that became Ecuadorean territorial sea in 1971 should already have been part of Peru's "maritime dominion". Yet Peru has produced no evidence in these proceedings of ever having made a claim to any area north of the boundary parallel.

7.23. Under the Santiago Declaration, Ecuador's further seaward projection was possible, and could not be opposed by Peru, because the parallel of latitude agreed in Article IV of the Santiago Declaration had prevented any competing Peruvian claim north of that parallel. Both accepted that Peru could not have

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[996] Supreme Decree No. 959-A of 28 June 1971, **Annex 212 to the Counter-Memorial**, Art. 1(d). Also see United States Department of State, Office of the Geographer, *Limits in the Seas, No. 42: Straight Baselines: Ecuador*, May 1972, **Annex 213 to the Counter-Memorial**.

[997] See para. 2.48 above.

**Figure 89**

Diagram showing the *alta mar* area by Dr. Elferink (1998)

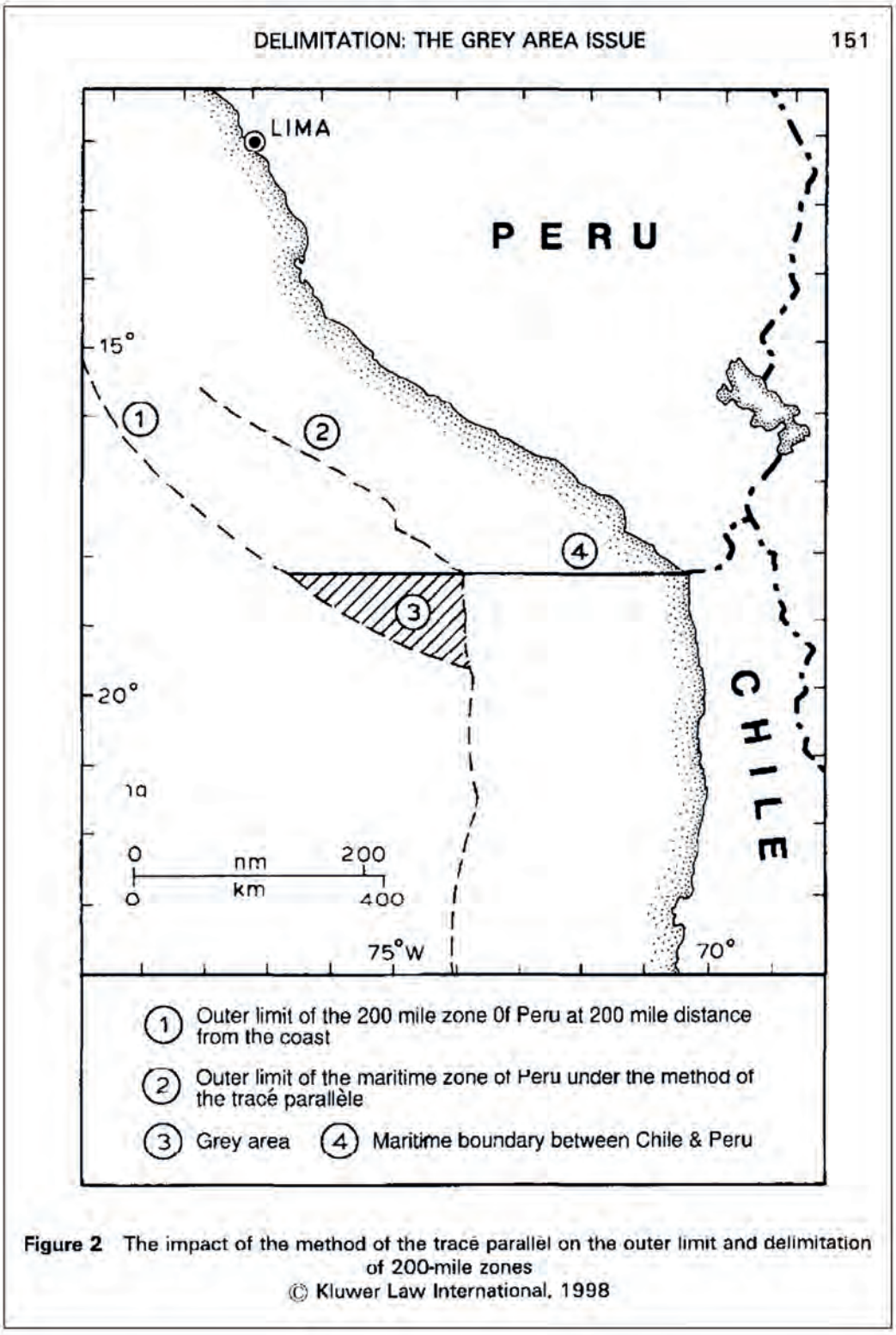


**Figure 2** The impact of the method of the tracé parallel on the outer limit and delimitation of 200-mile zones



Source: A. G. Oude Elferink, "Does Undisputed Title to a Maritime Zone Always Exclude its Delimitation: The Grey Area Issue", *International Journal of Marine and Coastal Law*, Vol. 13(2), 1998, p. 151

claimed any *alta mar* area north of their boundary parallel, since their maritime zones were laterally limited by the parallel established by the Santiago Declaration, even where, prior to 1971, the adjacent State had no abutting claim. This is illustrated by **Figure 90**.

## Section 4. The *Alta Mar* Area is treated as High Seas

### A. Peru's Control of Ships entering Peru's "Maritime Dominion" acknowledges that the *Alta Mar* Area is High Seas

7.24. Peru requires that any "national or foreign ship of any type that crosses into Peruvian waters (200 miles) from the. . .southern parallel 18° 21' S. . . transiting innocently or requesting to enter a Peruvian Port, is obliged to give its position, course, speed and port of destination" to designated Peruvian authorities and "while in Peruvian waters, [ships] must communicate their position [to those authorities] each day at 0800 and 2000 hours." This obligation is policed by the Peruvian Navy, and publicized in the *Sailing Directions* that it issues[998]. As discussed above[999], this system uses the Hito No. 1 parallel as the limit of the Peruvian "maritime dominion" for all vessels, of any type, navigating in the Peruvian "maritime dominion" for any reason. The relevant point in connection with the *alta mar* area is that the "southern parallel" applies to

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998 See Directorate of Hydrography and Navigation of the Navy, *Derrotero de la Costa del Perú*, 2nd edn, 1988, **Annex 175 to the Counter-Memorial**, sections 1.34 and 1.35, and Appendix A. Also see Directorial Resolution No. 347-91-DC/MGP of 20 December 1991 of the Directorate-General of Captaincies and Coastguard of Peru, **Annex 178 to the Counter-Memorial**, Art. 1 and Appendix 1 to Annex (1); Directorial Resolution No. 0313-94/DCG of 23 September 1994 of the Directorate-General of Captaincies and Coastguard of Peru, approving the System of Information on Position and Security in the Maritime Dominion of Peru, **Annex 180 to the Counter-Memorial**, Annex (1), Art. 1; Directorate of Hydrography and Navigation of the Navy of Peru, *Derrotero de la Costa del Perú, Vol. II*, 3rd edn, 2001, **Annex 193 to the Counter-Memorial**, section 4.4, Arts 1 and 2 and Annex (3); and a translation of Annex (2), Note to Annex (2) and Annex (3), 3rd case produced as **Annex 98** to this Rejoinder. For further discussion see Counter-Memorial, paras 3.78-3.84.

999 See paras 3.59-3.63 above.

passage from the *alta mar* area to Peru's "maritime dominion", just as it does from Chile's EEZ or territorial sea to Peru's "maritime dominion". The "southern parallel" is the limit of any and all Peruvian maritime entitlement.

7.25. Peru has produced official model reports for mariners to use in communicating with Peruvian authorities. In models produced in 1991 and 1994, one of the points of entry into the Peruvian "maritime dominion" is "1820.8S/07620W"[1000]. This point, which is illustrated on **Figure 91**, is located on the Hito No. 1 parallel, seaward of Chile's maritime zones, with the *alta mar* area to its south. Similarly, in the model produced in 2001, one of the points of entry is listed as "1820S/07620W"; this point is also seaward of Chile's maritime zones, with the *alta mar* area to the south[1001]. In this way, Peru has confirmed that the southern limit of its "maritime dominion" is at that parallel, and that the area to the south of that parallel is high seas.

7.26. Vessels are obliged under Peruvian law to make these reports, and they do so in practice. Examples include the following six reports made by Chilean, Panamanian and Liberian vessels in 2005 and 2007[1002], shortly before and after Peru's adoption of the arcs-of-circles method in its 2005 Baselines Law. These reports record crossings of the boundary parallel between the *alta mar* area newly claimed by Peru and Peru's existing "maritime dominion" —

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1000 See Directorial Resolution No. 347-91-DC/MGP of 20 December 1991 of the Directorate-General of Captaincies and Coastguard of Peru, **Annex 178 to the Counter-Memorial**, Appendix 2 to Annex (1), 1st case; Directorial Resolution No. 0313-94/DCG of 23 September 1994 of the Directorate-General of Captaincies and Coastguard of Peru, approving the System of Information on Position and Security in the Maritime Dominion of Peru, **Annex 180 to the Counter-Memorial**, Appendix 1 to Annex (4).

1001 Directorate of Hydrography and Navigation of the Navy of Peru, *Derrotero de la Costa del Perú, Vol. II*, 3rd edn, 2001, **Annex 193 to the Counter-Memorial**, p. 20, Appendix to Annex (3), 1st case.

1002 See Emails from Foreign Vessels to Peru's Directorate-General of Captaincies and Coastguard reporting entry into or departure from Peru's maritime dominion pursuant to the SISPER, **Annex 154**. Also see Appendix B, which summarizes recent records of reporting to the Peruvian authorities.

**Figure 90**

The *alta mar* area between Peru and Ecuador, existing prior to Ecuador's declaration of straight baselines in 1971, shown on Ecuador's official nautical chart (No. IOA 42)

Ecuador's official nautical chart (No. IOA 42), which is agreed by Peru to depict their maritime boundary, with the following marks highlighted and superimposed:

(a) Highlighted marks

+ – + – + – + Parallel of the international maritime boundary as depicted on Ecuador's official nautical chart (No. IOA 42)

Ecuador's 200M limit as depicted on Ecuador's official nautical chart (No. IOA 42)

Ecuador's straight baselines as depicted on Ecuador's official nautical chart (No. IOA 42)

(b) Superimposed marks

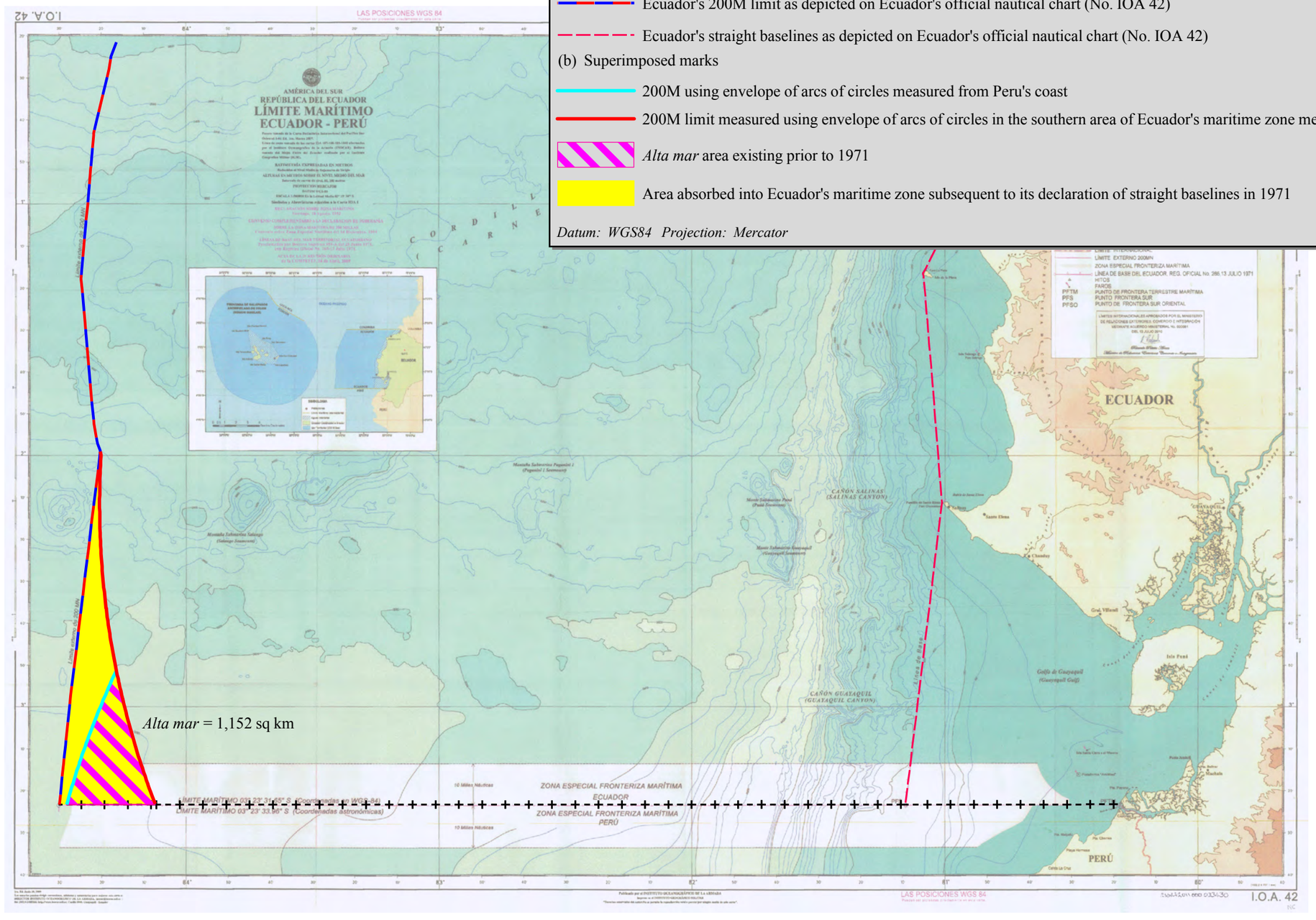
200M using envelope of arcs of circles measured from Peru's coast

200M limit measured using envelope of arcs of circles in the southern area of Ecuador's maritime zone measured from Ecuador's coast

*Alta mar* area existing prior to 1971

Area absorbed into Ecuador's maritime zone subsequent to its declaration of straight baselines in 1971

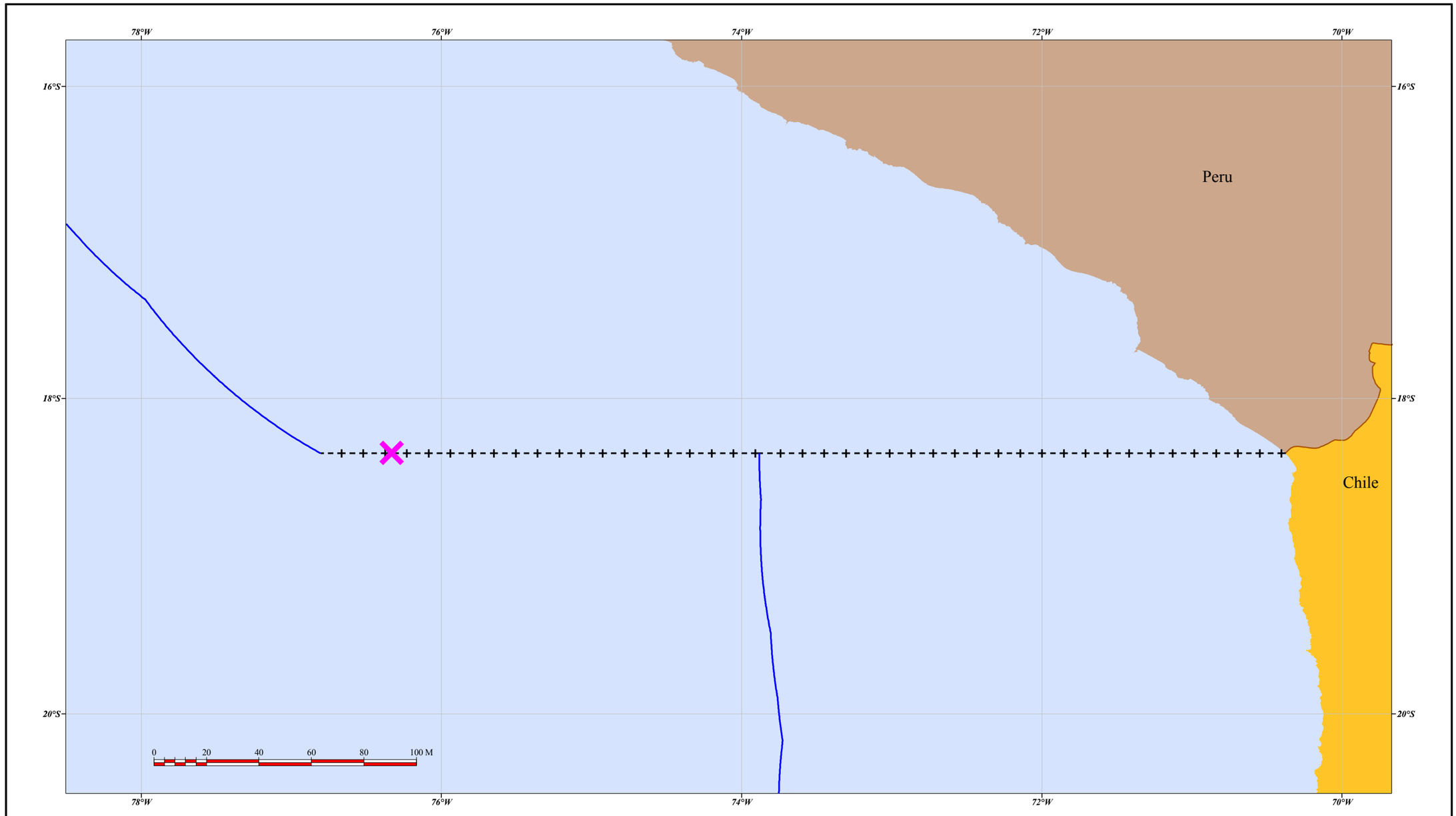
*Datum: WGS84 Projection: Mercator*




*Prepared for the Ministry of Foreign Affairs, Chile, by UKHO Law of the Sea Consultancy*

**Figure 91**

Point of entry into Peru's "maritime dominion" as set out in Peru's official model reports for mariners




Sources: Directorial Resolutions issued by the Directorate-General of Captaincies and Coastguard of Peru in 1991 and 1994 (reproduced in 2001) (see Annexes 178, 180 and 193 to the Counter-memorial)

+-+-+-+ Parallel of the international maritime boundary

200M limits

Point of entry into Peru's "maritime dominion" as set out in Peru's official model reports for mariners

*Datum: WGS84 Projection: Mercator*

*Prepared for the Ministry of Foreign Affairs, Chile, by UKHO Law of the Sea Consultancy*

that is to say, they are crossings for which on Peru's case no report would have been required[1003]. These crossings are illustrated on **Figure 92**.

*(a)* On 4 March 2005, the *Cabo Vírgenes* notified the Peruvian authorities that it would depart Peruvian waters on the same day, at 18° 20' S, 76° 40' W.

*(b)* On 10 April 2005, the *Posavina* notified the Peruvian authorities that it would enter Peruvian waters on the same day, at 18° 20' S, 75° 38' W.

*(c)* On 15 June 2005, the *Posavina* notified the Peruvian authorities that it would enter Peruvian waters on the same day, at 18° 20' S, 76° 19' W.

*(d)* On 4 September 2005, the *Posavina* notified the Peruvian authorities that it would enter Peruvian waters on the same day, at 18° 20' S, 76° 25' W.

*(e)* On 25 November 2005, the *Podravina* notified the Peruvian authorities that it would enter Peruvian waters on the same day, at 18° 20' S, 75° 25' W.

*(f)* On 31 December 2007, the *Glen Helen* notified the Peruvian authorities that it would enter Peruvian waters on the same day, at 18° 21' S, 76° 44' W.

7.27. All these reports indicate that a vessel was either exiting Peru's "maritime dominion" by crossing the parallel into the *alta mar* area, or entering Peru's "maritime dominion" by crossing the parallel from the *alta mar* area. All

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[1003] According to the coordinates given by Peru in **Figure 2.4 to the Memorial** (Vol. IV, p. 15), any crossing of the boundary parallel of latitude at any point of longitude between 73° 52' 55" W and 76° 46' 04" W would be a crossing between Peru's "maritime dominion" and the *alta mar* area Peru now claims.

these vessels complied with the official directives issued by the Peruvian Navy, and for that reason Peru neither did, nor could have, suggested that these vessels should have given notification of entry into or exit from Peru's "maritime dominion" at a more southerly point, upon entry into or exit from the "outer triangle", which Peru now asks the Court to grant to it.

### B. PERU'S CONTROL OF AIRCRAFT ENTERING ITS "MARITIME DOMINION" ACKNOWLEDGES THAT THE *ALTA MAR* AREA IS HIGH SEAS

7.28. Peru uses the parallel of latitude passing through the point where its land boundary with Chile reaches the sea to control passage from the airspace above its "maritime dominion" to the airspace above the *alta mar* area. The Peruvian Law on Civil Aeronautics specifies that authorization is required for "entry into, transit within and exit from" Peru's airspace[1004]. Peru purports to exercise "full and exclusive sovereignty" over the airspace above its entire "maritime dominion"[1005]. For this reason Peru's use of the parallel is not simply for the purposes of FIR Lima established pursuant to the Chicago Convention, but rather as the limit of Peru's purported sovereignty over the airspace covering its 200M "maritime dominion". Peru uses the entry and exit points on the flight paths in FIR Lima as the entry and exit points from its "sovereign" airspace. There are two such points on the Hito No. 1 parallel, at a longitude that makes them crossing points between Peru's "maritime dominion" and the *alta mar* area. One of these, code-named IREMI, is located at 18° 21' 00" S, 75° 23' 00" W. The other, code-named SORTA, is located at 18° 21' 00" S, 76° 18' 12" W[1006]. These can be seen on **Figure 93**.

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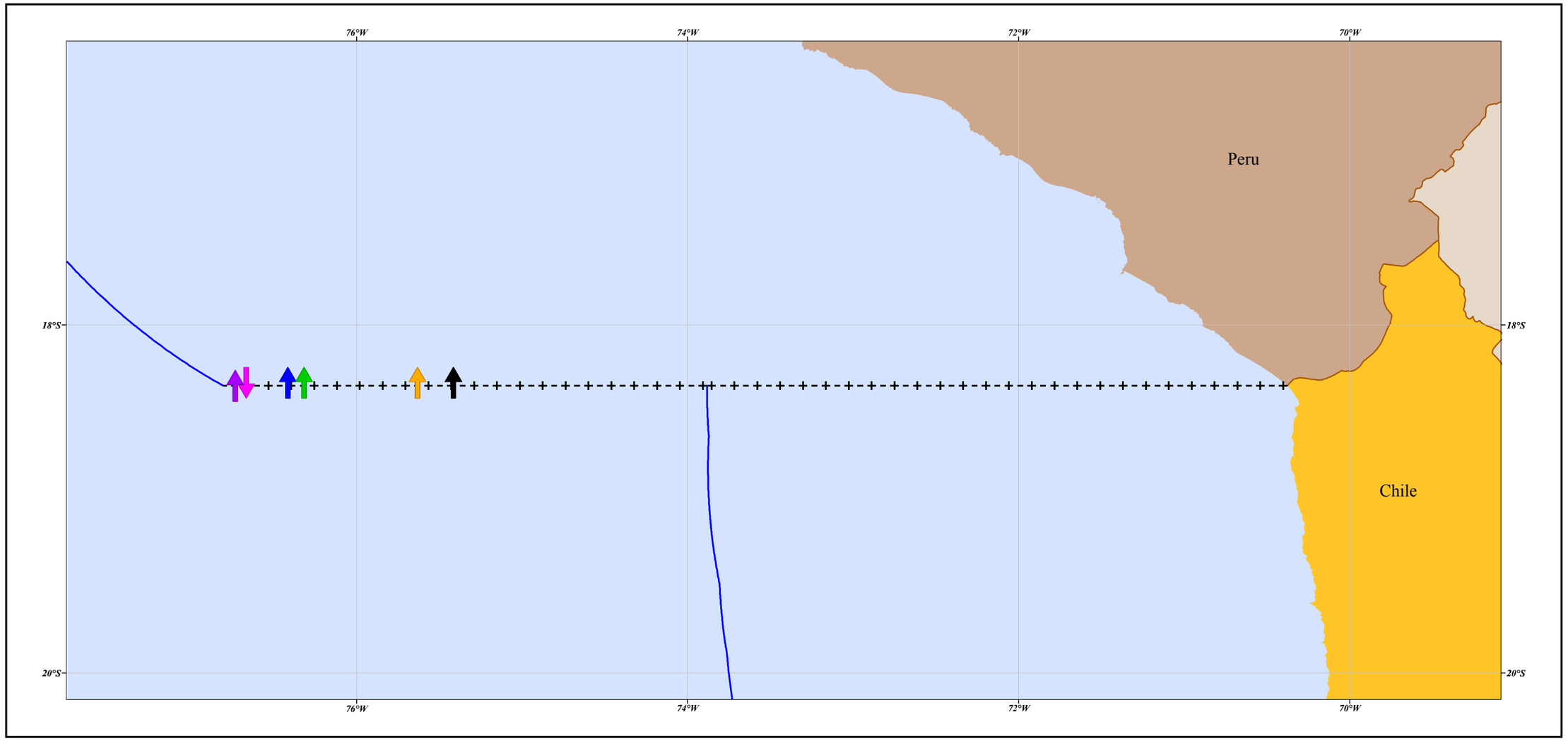
1004 Law No. 27261 of 9 May 2000: Law on Civil Aeronautics, **Annex 185 to the Counter-Memorial**, Art. 21.

1005 See Counter-Memorial, paras 2.170-2.172, 3.109-3.114 and 4.38-4.41.

1006 See air-route chart of Peru, reproduced as **Figure 29 to the Counter-Memorial**, Vol. I, after p. 232.

**Figure 92**

Examples of entry into or departure from Peru's "maritime dominion" as reported by foreign vessels to the Peruvian authorities




0 25 50 75 100 M

Parallel of the international maritime boundary

200M limits

*Cabo Virgenes* 4 March 2005 departing Peruvian waters

*Glen Helen* 31 December 2007 entering Peruvian waters

*Podravina* 25 November 2005 entering Peruvian waters

*Posavina* 10 April 2005 entering Peruvian waters

*Posavina* 15 June 2005 entering Peruvian waters

*Posavina* 4 September 2005 entering Peruvian waters

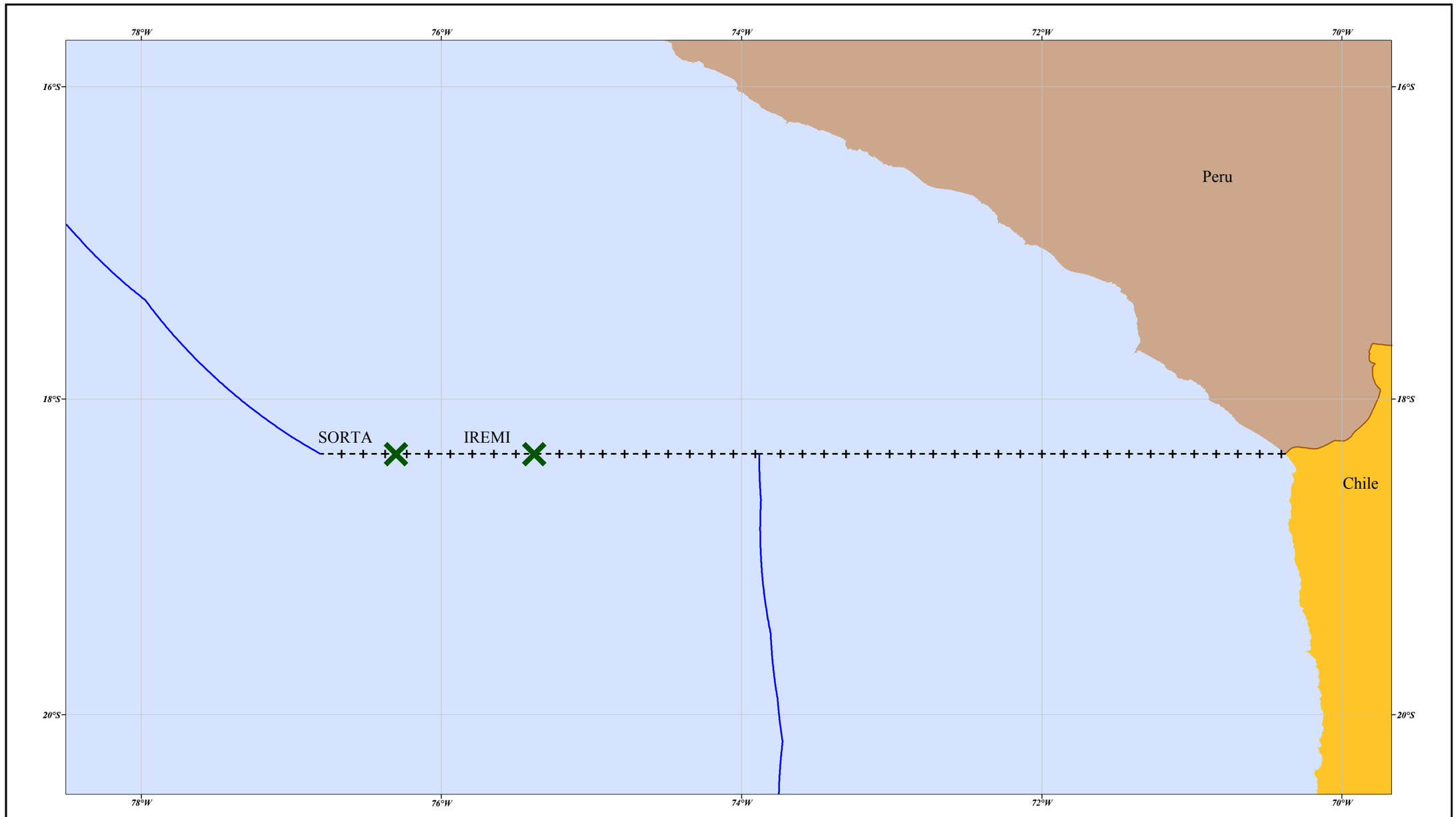
*Datum: WGS84 Projection: Mercator*

Source: Emails from foreign vessels to Peru's Directorate of Captaincies reporting entry into or departure from Peru's "maritime dominion" pursuant to the System of Information on Position and Security in the Maritime Dominion of Peru (SISPER)

*Prepared for the Ministry of Foreign Affairs, Chile, by UKHO Law of the Sea Consultancy*

Points of entry into and exit from Peruvian airspace adjacent to the *alta mar*

**Figure 93**




0 20 40 60 80 100 M

+-+-+-+ Parallel of the international maritime boundary

200M limits

Points of entry into and exit from Peruvian airspace on Peru's Flight Information Region

Source: Corporción Peruana de Aeropuertos y Aviación Comercial S. A., *Carta de Navegación en Ruta (ENRC), Espacio Aéreo Superior*, 2008

*Datum: WGS84 Projection: Mercator*

*Prepared for the Ministry of Foreign Affairs, Chile, by UKHO Law of the Sea Consultancy*

7.29. Peru has granted authorizations to Chile for flights entering and exiting Peru's "sovereign" airspace at point IREMI — that is, entering Peru's airspace from the *alta mar* and exiting from Peru's airspace into the *alta mar*[1007]. One example is Chile's request for authorization for overflight by an aircraft transporting Chile's peace-keepers to Haiti in December 2007, which passed through point IREMI on its outbound and return journeys[1008]. As with Peru's control of ships entering its "maritime dominion" from the *alta mar* area, Peru's control of aircraft entering its "sovereign" airspace above its "maritime dominion" from the *alta mar* area demonstrates Peru's acknowledgement that its "maritime dominion" is limited at the parallel of latitude 18° 21' 00" S and that, seaward of Chile's maritime zones, Peru considers that parallel to divide its "maritime dominion" from the high seas.

### C. PERUVIAN VESSELS TREAT THE *ALTA MAR* AREA AS HIGH SEAS

7.30. Consistently with Peru's treatment of the *alta mar* as high seas, Peruvian vessels reporting to Chilean authorities have referred to the *alta mar* area as "international waters". When requesting authorization to enter into and traverse Chile's EEZ to reach fishing grounds in the high seas to the west of Chile's EEZ, in the *alta mar*, Peruvian vessels have indicated that they were exiting Chile's EEZ to "international waters". Similarly, Peruvian vessels requesting authorization to enter Chile's EEZ from the *alta mar* have indicated that they were approaching from "international waters"[1009]. Appendix C to this

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1007 Examples of such authorizations are included as **Annex 158 to the Counter-Memorial**.

1008 See Counter-Memorial, para. 3.113; and Fax message of 15 January 2008 from the Chief of the Liaison and Protocol Department of the Air Force of Peru to the Directorate of the Air and Space Affairs of the Ministry of Foreign Affairs of Peru and to the Air Force Attaché of the Chilean Embassy in Peru, **Annex 110 to the Counter-Memorial**. The flight path is reproduced in **Figure 30 to the Counter-Memorial**, Vol. I, after p. 232.

1009 See Transcripts of requests by Peruvian fishing vessels to cross Chile's EEZ to reach fishing grounds in the high seas, **Annex 155**.

Rejoinder contains examples of requests from 2008 and 2009, with relevant coordinates.

## D. TREATMENT OF THE *ALTA MAR* AREA AS HIGH SEAS IN THE TRANSIT OF SCIENTIFIC VESSELS

7.31. Two buoys were recently deployed for scientific purposes in high seas waters westward of Chile's EEZ. Research vessels en route to these buoys from Chile's coast traverse the *alta mar*. These vessels seek Chile's authorization to traverse Chile's EEZ. By contrast, so far as Chile is aware, the vessels have not sought Peru's authorization, as would have been required if Peru treated the *alta mar* as part of its "maritime dominion". The *alta mar* area has high-seas status.

7.32. Both buoys were deployed by the Woods Hole Oceanographic Institution, which is based in the United States of America. The first buoy, which was deployed in 2000, is a surface mooring at 20° S 85° W, used for meteorological observations and to assess oceanic and atmospheric variability[1010]. Annual research cruises to the surface mooring, which are funded by the National Oceanic and Atmospheric Administration of the US (NOAA), have departed from Arica and transited through the *alta mar* since 2000[1011]. The authorized route of the research vessel *Melville*, as depicted on **Figure 34** in the Counter-Memorial[1012], reproduced here for convenience as **Figure 94**, traversed the *alta mar* area now claimed by Peru. The second buoy, which has been

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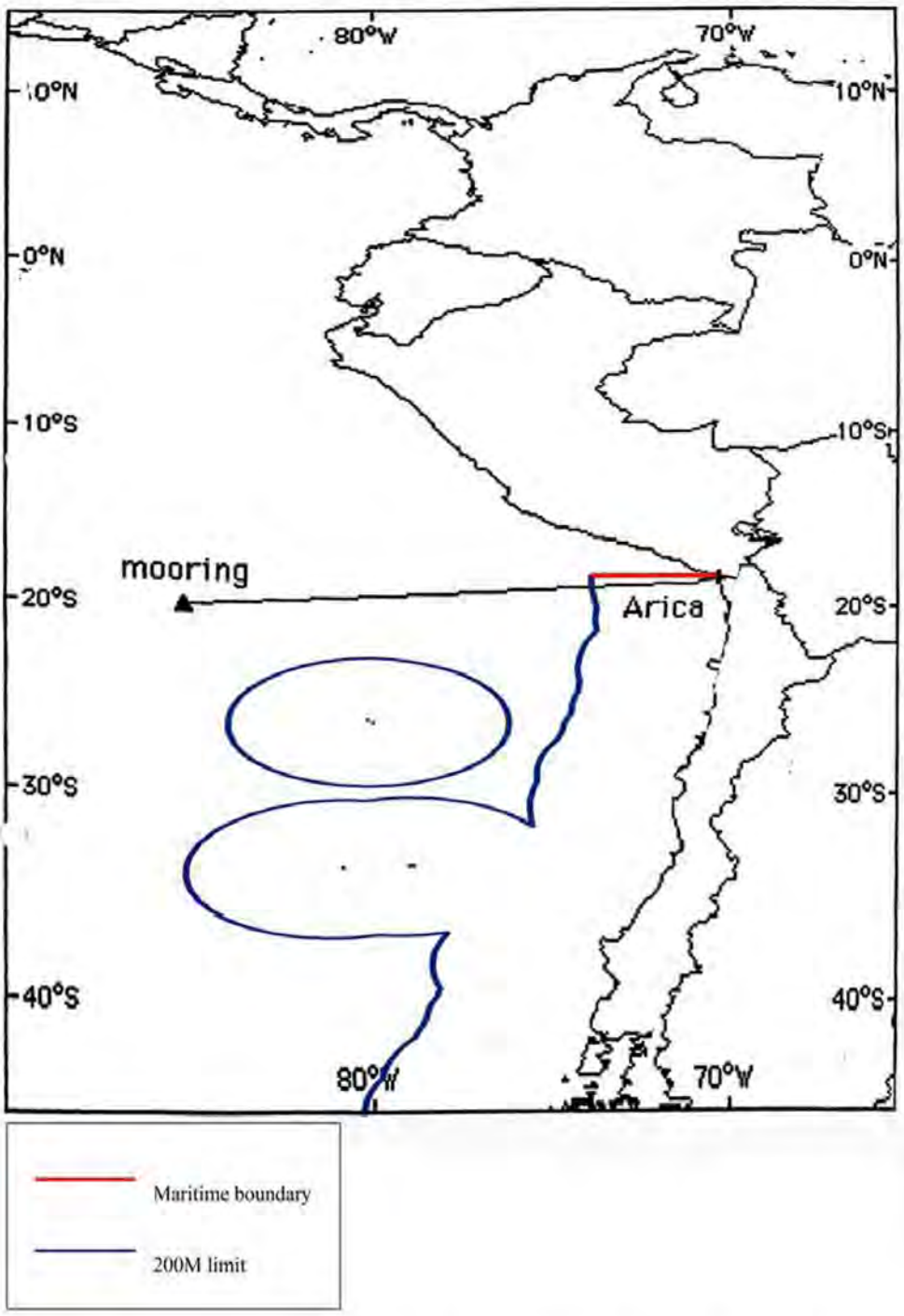
1010 See Woods Hole Oceanographic Institution, Upper Oceans Processes, Technical Report 04-01, "Stratus Ocean Reference Station (20° S, 85° W), Mooring Recovery and Deployment Cruise, R/V *Revelle* Cruise Dana 03, November 10 - November 26, 2003", **Annex 152**, p. 1.

1011 See, e.g., Note No. 081 of 26 April 2000 from the United States Embassy in Chile to the Ministry of Foreign Affairs of Chile, **Annex 92 to the Counter-Memorial**; also see SHOA Resolution No. 13270/37/VRS of 9 June 2000, **Annex 146 to the Counter-Memorial**; Note No. 090 of 3 April 2003 from the United States Embassy in Chile to the Ministry of Foreign Affairs of Chile, **Annex 103 to the Counter-Memorial**; SHOA Resolution No. 13270/04/113/VRS of 23 July 2003, **Annex 154 to the Counter-Memorial**.

1012 Counter-Memorial, Vol. I, after p. 236.

**Figure 94**

Scientific voyage authorized by the Chilean Navy: *R/V Melville* (2000)




Sketch-map in Note No. 081 of 26 April 2000 from the United States Embassy in Chile to the Chilean Foreign Ministry, showing the proposed route of the research ship *Melville.* The route within Chilean waters was authorized by SHOA.

operational since 2003, is a tsunami-detecting device owned by the Chilean Hydrographic and Oceanographic Service of the Chilean Navy[1013]. It was originally deployed at 19° 40' S, 74° 50' W[1014] and since 2010 it is located in the *alta mar*[1015]. This buoy, too, is serviced by the same vessels as the meteorological buoy[1016]. There is no indication that these vessels sought or obtained permission from Peru to transit through the *alta mar* to reach the buoy. The authorized route of the research vessel *Ronald H. Brown*, as depicted on **Figure 95**, traversed the *alta mar* area.

## Section 5. Peruvian Authors Acknowledge that the *Alta Mar* Area is High Seas

7.33. In its Reply, Peru criticized Chile for having failed to pay sufficient attention to a number of Peru's "renowned authors in the field of the law of the sea", including Admiral Faura, Professor Ferrero Costa and Dr. Agüero Colunga[1017]. All these three authors have acknowledged that the *alta mar* area is an area of high seas, in which Peru has never exercised any jurisdiction.

7.34. In his 1977 book, Admiral Faura noted that the "triangular-shaped area" constituting the *alta mar* area was "omitted" from Peru's maritime dominion, and was "not being currently considered as within our boundaries"[1018]. He produced a sketch-map in which the *alta mar* area was specifically identified.

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1013 See Woods Hole Oceanographic Institution, Upper Oceans Processes, Technical Report 04-01, "Stratus Ocean Reference Station (20° S, 85° W), Mooring Recovery and Deployment Cruise, R/V *Revelle* Cruise Dana 03, November 10 - November 26, 2003", **Annex 152**, p. 55.

1014 *Ibid*., p. 56.

1015 See Report of Commission No. 3 of 2 December 2010, "Anchoring of Buoy Dart II", by Lieutenant Commander Andrés Enríquez Olavarría, Head of the Department of Planning and Operations of SHOA, to the Director of SHOA, **Annex 73**, p. 3.

1016 See, e.g., Note No. 144 of 10 June 2004 from the United States Embassy in Chile to the Ministry of Foreign Affairs of Chile, **Annex 32**. Also see SHOA Resolution No. 13270/04/212/VRS of 25 October 2004, **Annex 72**.

1017 See Reply, para. 3.180.

1018 G. Faura Gaig, *El Mar Peruano y sus Límites*, 1977, **Annex 173**, pp. 193-194.

He described the area as being "south of the parallel of the point at which the land frontier reaches the sea"[1019]. Admiral Faura's sketch-map is shown here as **Figure 96**.

7.35. Admiral Faura's sketch-map was reproduced, with some further annotations, in Professor Ferrero Costa's work, in 1979[1020]. Professor Ferrero Costa's map, which is reproduced here as **Figure 97**, depicts the *alta mar* area shaded as "Zone B". "Zone B" is shown as being to the south of Peru's "maritime dominion" measured according to the "Boundaries on the parallels [*Límites sobre los paralelos*]". The author explicitly acknowledged that Peru's delimitation of its maritime boundaries is a result of "the content of two instruments. . .approved by the countries of the South Pacific, which are the Declaration of Santiago of 1952 and the Agreement Relating to a Special Maritime Frontier Zone of 1954."[1021] He stated that:

> "The delimitation of the boundary to the South following the geographic parallel, results in two zones located in front of Peru's coasts being outside of the jurisdiction of the Peruvian state"[1022].

These zones were "Zone B", which was the *alta mar* area, and "Zone A", which was the area within 200M of Chile's coast located between the parallel of latitude constituting the maritime boundary and a hypothetical equidistance line.

7.36. A similar sketch-map was included in Dr. Marisol Agüero Colunga's 2001 book[1023]. This sketch-map, which is reproduced here as **Figure 98**, depicts

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1019 G. Faura Gaig, *El Mar Peruano y sus Límites*, 1977, **Annex 173**, p. 194.

1020 See E. Ferrero Costa, *El Nuevo Derecho del Mar – El Perú y las 200 Millas*, 1979, **Annex 174**.

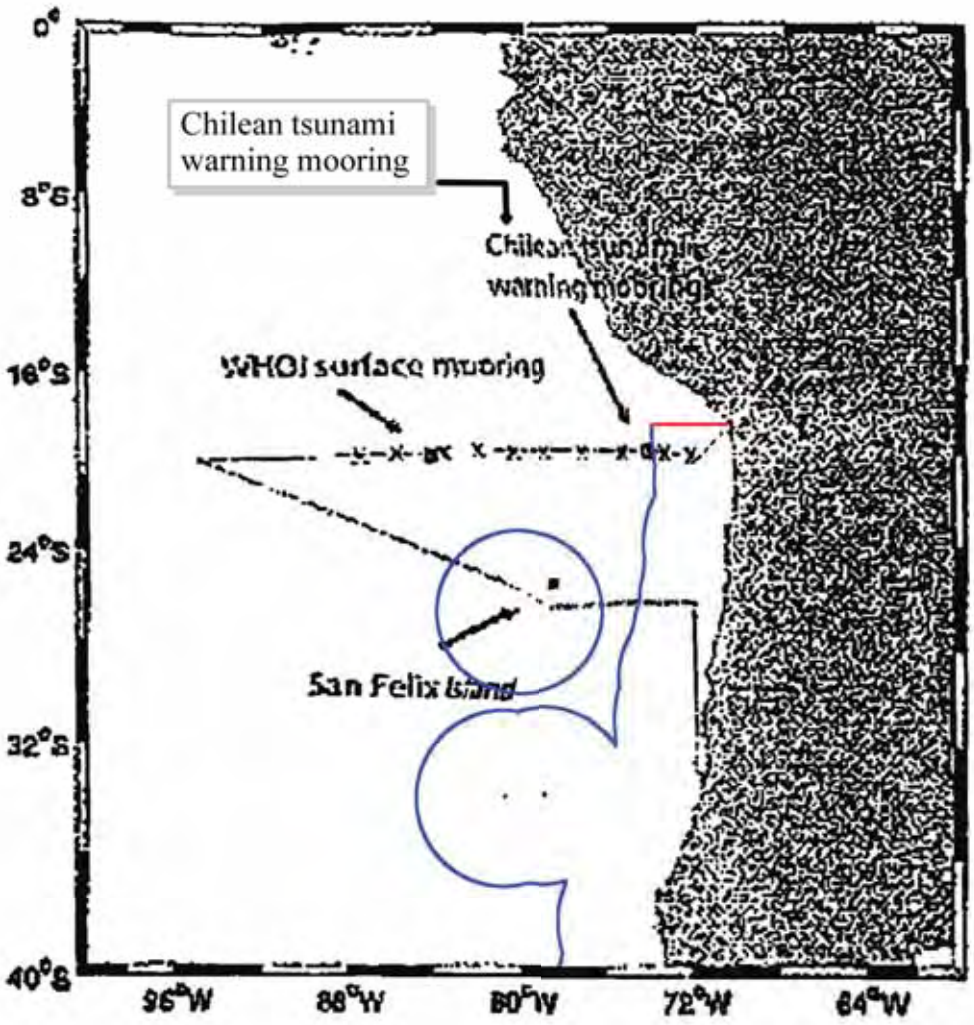
1021 *Ibid*., p. 379.

1022 *Ibid*., p. 382.

1023 See M. Agüero Colunga, *Consideraciones para la delimitación marítima del Perú*, 2001, **Annex 157**, pp. 242 (Diagram No. 15) and 322 (Diagram No. 22).

**Figure 95**

Scientific voyage authorized by the Chilean Navy: *R/V Ronald H. Brown* (2004)



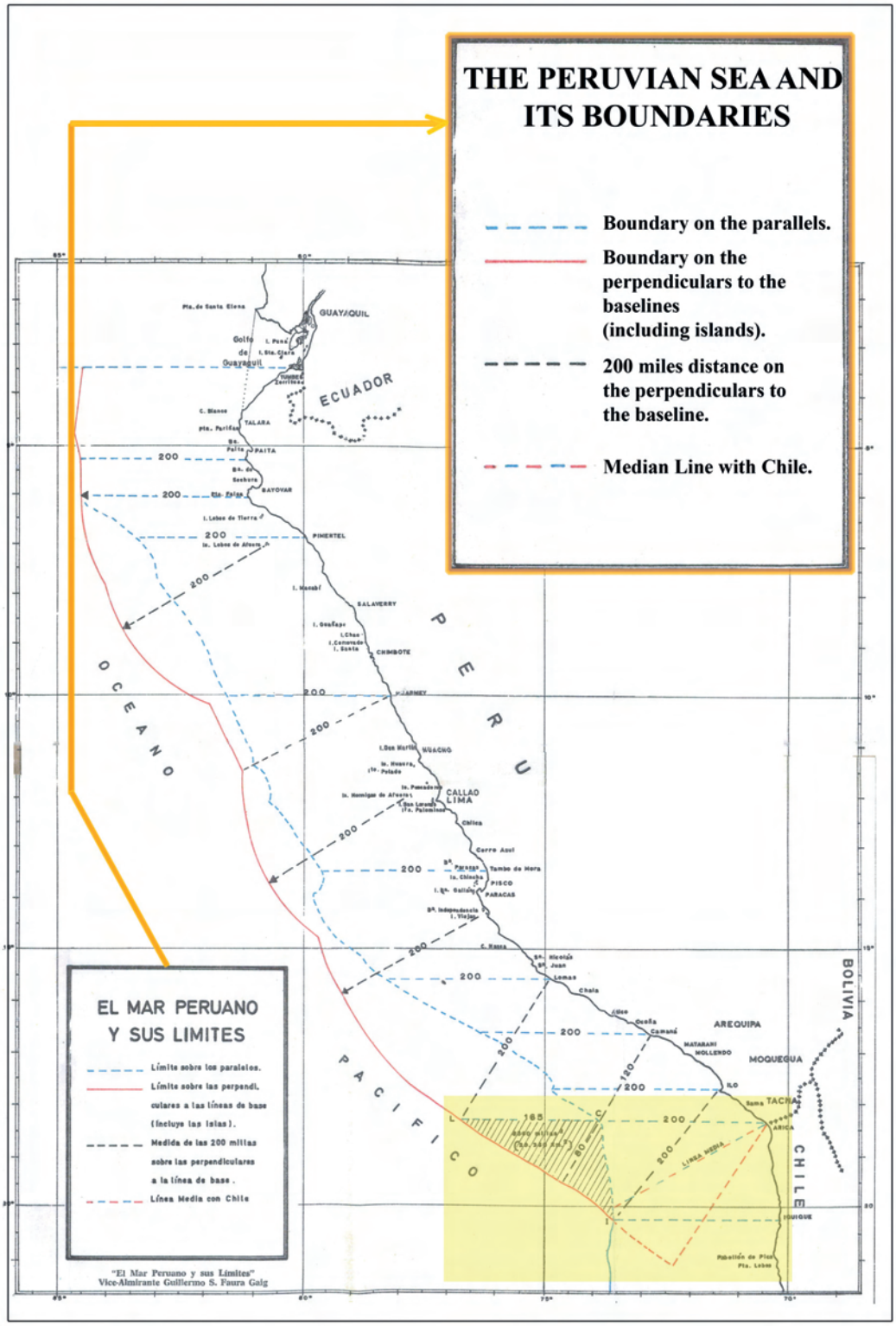

Maritime boundary

200M limits

Sketch-map in Note No. 144 of 10 June 2004 from the United States Embassy in Chile to the Ministry of Foreign Affairs of Chile. The route within Chilean waters was authorized by SHOA.

**Figure 96**

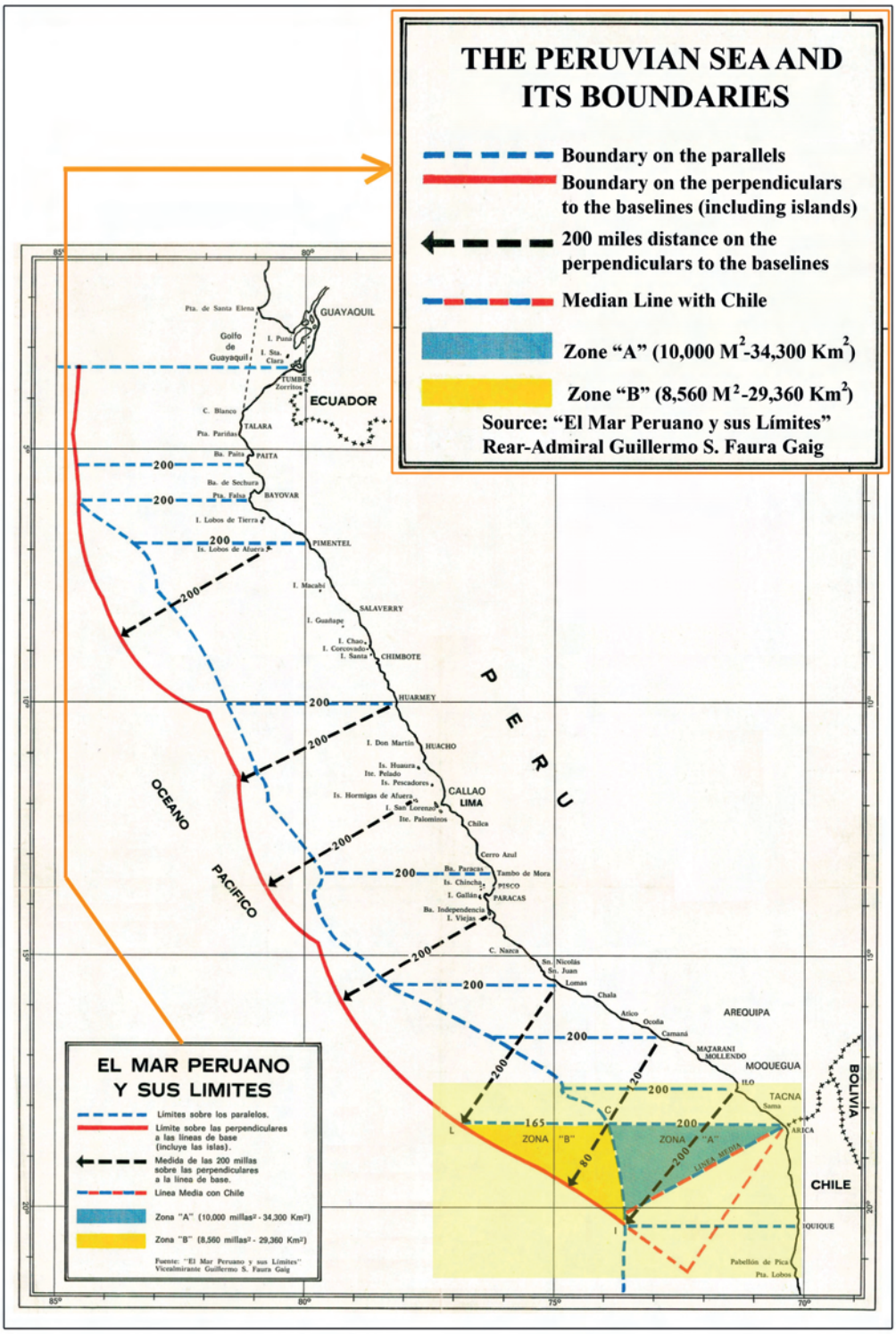
Sketch-map of the Peruvian Sea and Its Boundaries by Admiral Faura (1977)




Source: Rear Admiral G. S. Faura Gaig, *El Mar Peruano y sus Límites*, 1977, inserted after p. 144 (English translation and highlighting added)

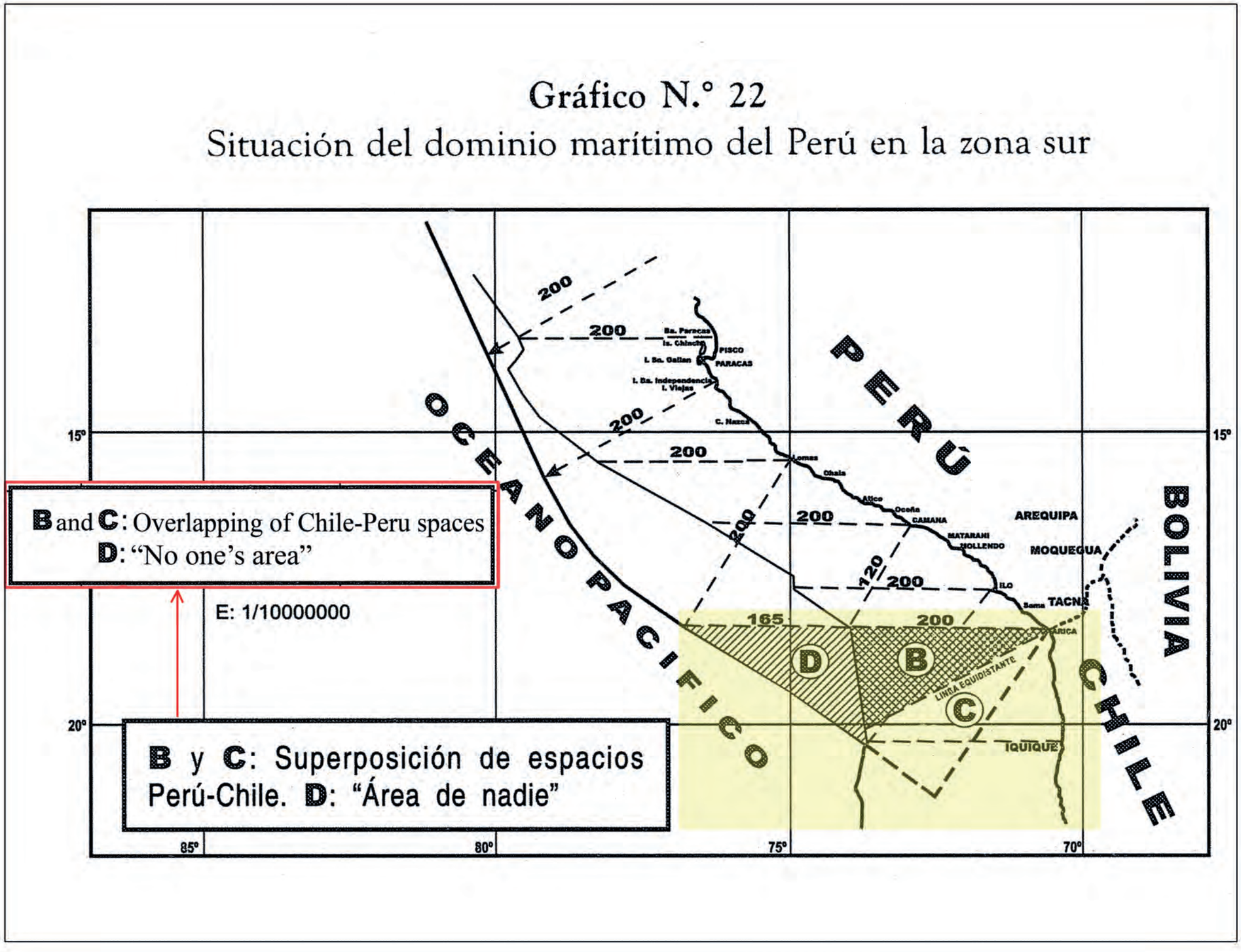
**Figure 97**

Sketch-map of the Peruvian Sea and Its Boundaries by Admiral Faura, reproduced by Professor Ferrero Costa (1979)




Source: E. Ferrero Costa, El Nuevo Derecho del Mar, El Perú y las 200 millas, 1979, inserted after p. 384 (English translation and highlighting added)

"Situation of the maritime dominion of Peru in the southern zone"




Source: M. Agüero Colunga, *Consideraciones para la Delimitación Marítima del Perú*, 2001, p. 322 (English translation and highlighting added)

the *alta mar* area (marked as area "D") as the "*[á]rea de nadie*" or "no-one's area". The author stated that this area "remains part of the high seas"[1024] and that it is not within Peru's "maritime zone"[1025]. She acknowledged that–

> "the recovery of such extensions of sea would entail the configuration of a situation which has not existed so far, with consequences on the bilateral relation: a portion of the sea adjacent to the coasts of Chile would no longer abut the high seas and would start abutting the maritime dominion of Peru."[1026]

7.37. To conclude, consistently with the practice of Peru, outlined in Subsection 4 above, all three of these Peruvian authors on whom Peru relies acknowledge that Peru does not exercise jurisdiction in the *alta mar* and has never purported to exercise jurisdiction there. It is clear that in asking the Court to give it the *alta mar* area, Peru is asking for something to which it currently has no entitlement. It has no such entitlement because of the agreement that it concluded with Ecuador and Chile in the Santiago Declaration of 1952.

## Section 6. Implications of Absorption of the *Alta Mar* Area into Peru's "Maritime Dominion"

7.38. If the Court were to award the *alta mar* area to Peru, particular difficulties would arise. Peru's constitutionally-entrenched maritime zone is more than the sum of a continental shelf and an EEZ; rather, it is an undifferentiated 200M zone equal to a territorial sea, and is in fact widely understood to be such[1027]. This is discussed more fully at paragraphs 2.166-2.176

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1024 M. Agüero Colunga, *Consideraciones para la delimitación marítima del Perú*, 2001, **Annex 157**, p. 323.

1025 *Ibid*.

1026 *Ibid*., p. 324.

1027 See United Nations Division for Ocean Affairs and the Law of the Sea, *Table of Claims to Maritime jurisdiction*, 2008, **Annex 244 to the Counter-Memorial**. Also see D. P. O'Connell, *The International Law of the Sea*, Vol. I, 1982, **Annex 298 to the Counter-Memorial**, p. 572; J. Castañeda, "Les positions des États Latino-

of the Counter-Memorial. In particular, Peru purports to control entry, transit and exit of all vessels, whatever the nature and purpose of their voyage, out to the full 200M extent of its "maritime dominion". Peru exercises the same kind of control over all aircraft overflying its "maritime dominion". This kind of control is inconsistent with the EEZ and continental shelf régimes[1028].

7.39. Chile has without protest complied with these requirements in Peru's maritime zone, pursuant to the Santiago Declaration which is the foundation for Peru's requirements. Given that the opposability of Peru's requirements vis-à-vis Chile rests on the Santiago Declaration, Peru must also respect the spatial limits within which it may impose such requirements under that Declaration. Peru must observe the boundary parallel.

7.40. However, if the Court were to expand Peru's "maritime dominion" so that it wrapped around the northern part of Chile's maritime zone, this would impede access from Chilean waters to the high seas. And this for a significant distance of 111M (measured in a north-south direction at the edge of Chile's maritime zone). This may be seen on **Figure 2** of the Counter-Memorial[1029].

7.41. Any ship or aircraft wishing to enter the high seas from that northern part of Chile's maritime zones would need either to ask permission from Peru to transit Peru's "maritime dominion" or navigate around it, steaming up to 111M south before being able to gain direct access to the high seas. This would create significant practical difficulties. The centre of the Chilean city of Arica lies just 18 kilometres to the south of the land boundary with Peru. It has a major harbour servicing fishing and other vessels. Arica is the primary port used by Bolivia, on account of geographical proximity and special facilities there available for

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Américains", *Actualités du droit de la mer*, 1973, **Annex 256 to the Counter-Memorial**, p. 159; R. Dupuy and D. Vignes (eds), *A Handbook on the New Law of the Sea*, Vol. I, 1991, **Annex 258 to the Counter-Memorial**, p. 302.

1028 Cf. UNCLOS, Arts 56 and 78.

1029 Counter-Memorial, Vol. I, after p. 8.

Bolivia by virtue of international commitments by Chile[1030]. Arica's Chacalluta airport is also there. The significance of the fishing and fisheries industries based at the port of Arica has already been explained at paragraphs 6.13-6.15 above.

7.42. Peru seeks to avoid the obvious difficulties of asking the Court to expand a maritime zone that is neither recognized by nor compliant with customary international law by using language in its submissions that does comply with customary international law. In its first submission, Peru asks the Court to delimit "the respective maritime zones" of the Parties. In its second submission, concerning the *alta mar* area, Peru borrows the language of UNCLOS, to which it is not party, and asks the Court to declare that it is "entitled to exercise exclusive sovereign rights" in that area[1031]. Yet, consistently with its Constitution, what Peru would actually do is extend its "maritime dominion" into that area.

7.43. Peru has crafted its submissions such that, in a formal sense, the Court could remain neutral on the characteristics of Peru's "maritime dominion". Given that any part of the *alta mar* area awarded to Peru would be inevitably subsumed within its "maritime dominion", Chile submits that the Court should heed not only the formal content of the submissions made to it, but also the consequences that would ineluctably flow from them as a matter of domestic constitutional law.

7.44. Peru also seeks in its Reply to argue that its "maritime dominion" is compliant with customary international law. As already noted, key aspects of this assertion are debatable[1032]. It is sufficient to reiterate here that on no possible

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1030 See Counter-Memorial, para. 1.20.

1031 Reply, p. 331.

1032 See para. 7.38 above and the references there.

view is controlling airspace beyond a 12M territorial sea compliant with international law[1033].

7.45. In arguing that its "maritime dominion" is consistent with international law, at paragraph 21 of its Reply Peru relies on Article 54 of its 1993 Constitution, which states that Peru "exercises sovereignty and jurisdiction. . .without prejudice to the freedoms of international communications, in conformity with the law and the treaties ratified by the State."[1034] Reliance on this highly unspecific provision does not assist Peru at all, for one obvious reason. Peru has not ratified UNCLOS, and so this constitutional provision cannot even purport to be in compliance with it.

7.46. Moreover, Peru's present description of its domestic law appears to be unreliable. It is contradicted by a 2004 Report of the Foreign Affairs Committee of the Congress of Peru, which concluded that UNCLOS was inconsistent with Peru's Constitution and thus Peru's accession to UNCLOS would require constitutional reform. The Report, which Peru failed to produce to the Court, states:

> "[T]he maritime and air space comprised within the two hundred miles, in accordance with the Constitution in force, is 'Territory of the State', which does not fit with a mere acknowledgement of the 'Exclusive Economic Zone' to which the Convention refers and which only applies to the sea."[1035]

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1033 See UNCLOS, Art. 58.

1034 Political Constitution of Peru, **Annex 179 to the Counter-Memorial**, Art. 54.

1035 Report of the Foreign Affairs Committee of the Congress of the Republic concerning Draft Legislative Resolution No. 813/2001-CR, which proposes the approval of the accession of Peru to the United Nations Convention on the Law of the Sea and the Agreement Relating to the Implementation of Part XI of said Convention, approved on 4 October 2004, **Annex 99**, p. 24.

7.47. The Report quotes with approval the writings of Alfonso Benavides Correa, a Peruvian publicist, who states that by acceding to UNCLOS, "Peru would reduce the breadth of its 200-nautical mile *territorial sea* to 12"[1036], and would thereby "convert 188 miles of its mutilated national maritime dominion into a multinational maritime condominium maliciously called 'Exclusive Economic Zone'"[1037]. He is quoted as noting that by acceding to UNCLOS Peru would "likewise mutilate the airspace at present above its 200-mile maritime dominion"[1038]. There is no question about the authoritativeness of the Foreign Affairs Committee of the Congress of Peru. Peru has relied on a report of this same body as evidence in these proceedings[1039].

7.48. The inconsistency between Peru's "maritime dominion" and an UNCLOS-compliant regime is no secret. Having strongly advocated a "territorialist" position throughout the nine years of the Third United Nations Conference on the Law of the Sea (and in fact its preparatory stages as well[1040]), Peru explained its difficulty with the final text of UNCLOS at the end of that Conference. Ambassador Arias-Schreiber, the leader of Peru's delegation, stated that–

> "the provisions of the draft convention concerning the territorial sea and the exclusive economic zone and their

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1036 Report of the Foreign Affairs Committee of the Congress of the Republic concerning Draft Legislative Resolution No. 813/2001-CR, which proposes the approval of the accession of Peru to the United Nations Convention on the Law of the Sea and the Agreement Relating to the Implementation of Part XI of said Convention, approved on 4 October 2004, **Annex 99**, p. 26 (emphasis added).

1037 *Ibid*., p. 27.

1038 *Ibid*.

1039 See Reply, paras 3.163 and 3.126.

1040 See, e.g., United Nations General Assembly, *Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction*, Vol. V, document SC.II/WG/Paper No. 4, Territorial Sea, 1973, **Annex 124**, pp. 18-19. Peru proposed, together with Ecuador and Panama, "sovereignty and jurisdiction" to a distance of 200M over waters, airspace, seabed and subsoil.

> relation to air space affected Peru's juridical and constitutional norms, and he therefore wished to state that he had voted in favour of the draft convention *ad referendum* and on condition that the conflict involving those norms could be resolved in accordance with the procedures laid down in the constitution of Peru."[1041]

7.49. The conflict has evidently not been resolved. Peru's "maritime dominion" does not comply with international law. The Court should not authorize Peru's attempt to wrap its "maritime dominion" around the northernmost 111M of Chile's EEZ. It would be to the detriment not only of Chile, but also of the international community, to transform this significant area of high seas into Peru's "maritime dominion".

7.50. Clearly, except for the purposes of this case, Peru does not consider its "maritime dominion" to be consistent with customary international law as reflected in the provisions of UNCLOS concerning the EEZ and the continental shelf, and in particular with the rights and freedoms that third States are entitled to exercise in these zones of another State. This being the case, customary international law on the EEZ and the continental shelf can be of no assistance to Peru in laying claim to the *alta mar*. The claim is inadmissible[1042].

## Section 7. *Alta Mar* Situations are Possible in Law and Occur in Practice

7.51. A situation is possible in law where one State's theoretical distance-based entitlement to a maritime zone is precluded by an agreed limit even where the adjacent State does not have the same type of maritime zone, or any maritime zone at all, on its side of that line. Such situations do in fact occur in practice, where the boundary is not a perfect equidistance line.

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1041 United Nations, *182nd Plenary Meeting of the Third United Nations Conference on the Law of the Sea*, 30 April 1982, 3.20 p.m., document A/CONF.62/SR.182, **Annex 50 to the Counter-Memorial**, para. 90.

1042 See Counter-Memorial, para. 1.74.

7.52. Contrary to Peru's assertion[1043], there is no need for "express renunciation" or "evidenced acquiescence" to create this result. It is simply a consequence of the agreement between the parties, or the judgment or award of a court or tribunal. As is evident from the following examples, and from common sense, international law presumes against a situation where the maritime zone of one State wraps around the outer limit of the maritime zone of an adjacent State, and so occludes the latter zone from access to the high seas. It also presumes in favour of full delimitations between adjacent States.

7.53. In the 1984 agreement between Argentina and Chile, two segments of the maritime delimitation line follow meridians of longitude, and the segment between them follows a parallel of latitude[1044]. **Figure 10** of the Counter-Memorial[1045] is reproduced here for convenience as **Figure 99**, with the addition of a hypothetical equidistance line. This illustrates that there is an area of 26,200 $km^2$ which is within 200M of Chile's baselines, beyond 200M of Argentina's baselines, and lies to the east of the meridian designated as the final sector of the maritime boundary[1046]. This area is high seas, though within a 200M radius of Chile's coast. The relevant provision of the 1984 agreement states:

> "To the south of the end of the boundary (point F), the exclusive economic zone of the Republic of Chile shall extend, up to the distance permitted by international law, to the west of the meridian 67°16.0' West longitude, ending on the east at the high sea."[1047]

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1043 See Reply, paras 6.31-6.34.

1044 See Counter-Memorial, para. 2.125.

1045 Counter-Memorial, Vol. I, after p. 106.

1046 Also see **Figure R-6.1 to the Reply**, Vol. III, p. 97.

1047 Treaty of Peace and Friendship between Chile and Argentina, signed at Vatican City on 29 November 1984, 1399 *UNTS* 89 (entered into force on 2 May 1985), **Annex 15 to the Counter-Memorial**, Art. 7.

Contrary to Peru's assertions, there is no language of "express renunciation"[1048] or "cession"[1049] in this provision. And Chile, Argentina and third States who exercise fishing rights in this *alta mar* area all accept that as a consequence of the agreement between the parties, this is an area of high seas.

7.54. The analogy with the present case is clear: in the same way that the selection of the meridian as the maritime boundary between Argentina and Chile precludes Chile's distance-based entitlement east of the boundary meridian, the selection of the parallel of latitude as the maritime boundary by Chile and Peru precludes any distance-based entitlement of Peru south of the parallel.

7.55. There are other examples from treaty practice where two States have agreed a maritime boundary which results in one State's theoretical distance-based entitlement being partially precluded by the agreed boundary line although the other State has no abutting maritime zone. The following examples are illustrative:

*(a)* The 1975 agreement between Colombia and Ecuador establishes a maritime boundary along "the line of the geographic parallel traversing the point at which the international land frontier between Ecuador and Colombia reaches the sea"[1050]. This agreed boundary leaves an *alta mar* area of some 900 $km^2$ on the Ecuadorean side of the parallel, which is beyond 200M from Ecuador's baselines but within 200M of Colombia's. The agreement has the effect of precluding Colombia's distance-based entitlement as a result of the agreed delimitation line.

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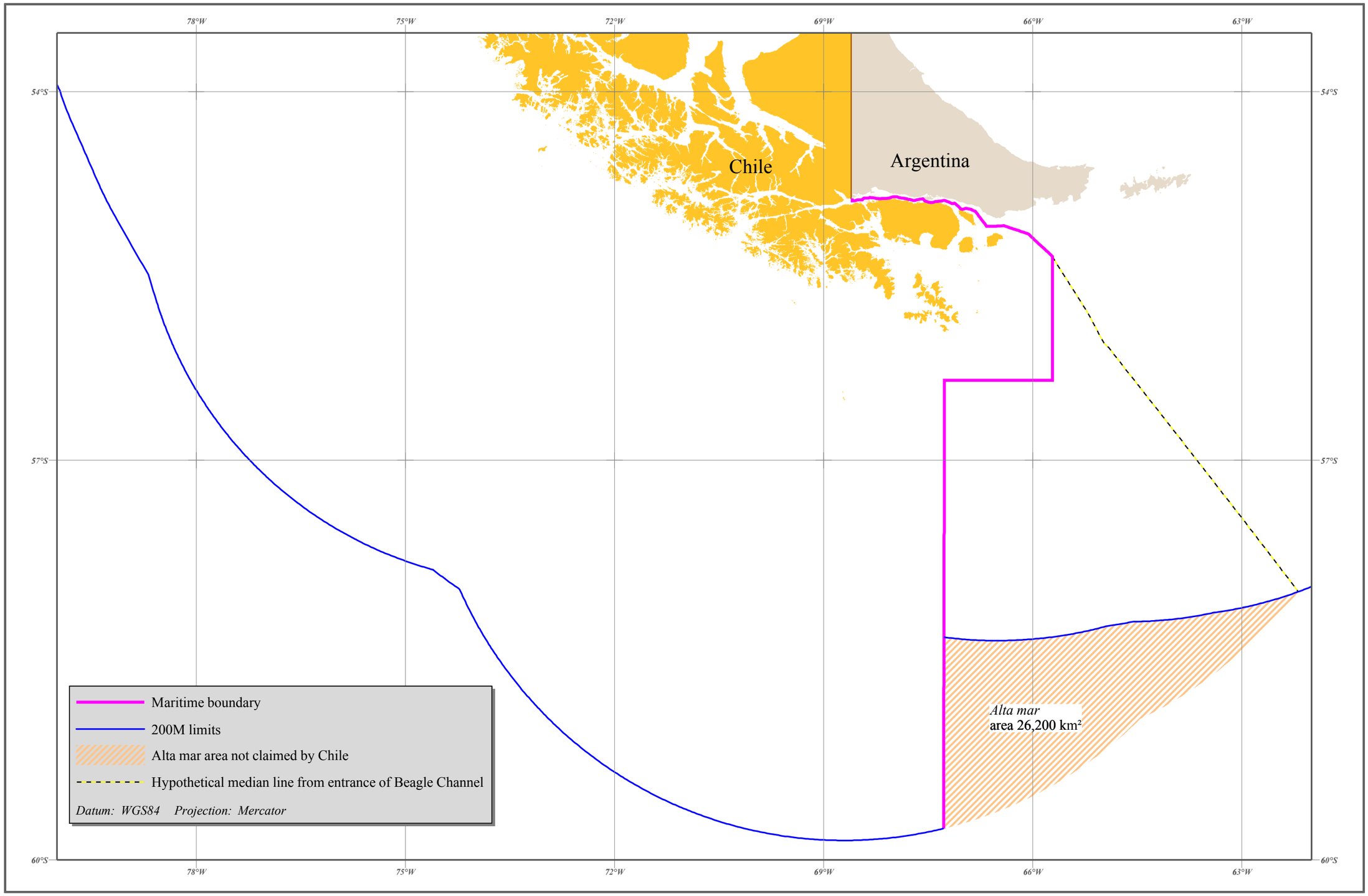
1048 Reply, para. 6.31.

1049 *Ibid*., para. 6.33.

1050 Agreement Concerning Delimitation of Marine and Submarine Areas and Maritime Co-operation between the Republics of Colombia and Ecuador, signed at Quito on 23 August 1975, 996 *UNTS* 237 (entered into force on 22 December 1975), **Annex 9 to the Counter-Memorial**, Art. 1.

**Figure 99**

Alta mar area arising from the agreed maritime boundary between Chile and Argentina with hypothetical median line




*The boundary is depicted according to the Treaty of Peace and Friendship between Chile and Argentina, signed at Vatican City on 29 November 1984, 1399 UNTS 89 (entered into force 2 May 1985).*
*The hypothetical median line from the entrance to Beagle Channel to the 200M limit has been added for comparison.*

*Prepared for the Ministry of Foreign Affairs, Chile, by Marine Delimitation Ltd.*

*(b)* Similarly, the 1972 agreed boundary between Brazil and Uruguay, which is described to run "at an azimuth of [128] sexagesimal degrees (from true north), to the outer limit of the territorial sea of both countries"[1051], leaves an *alta mar* area of 24 km$^2$ on the Brazilian side of the azimuth, which is within 200M of Uruguay's baselines and beyond 200M of Brazil's baselines. This area is also high seas, again by virtue of the delimitation agreement.

*(c)* An *alta mar* area of some 760 km$^2$ is created by the maritime delimitation agreement between Brazil and French Guiana, by the establishment of a "maritime delimitation line, including that of the continental shelf" along an azimuth[1052]. The area is within 200M of Brazil's baselines. If the area were absorbed into Brazil's maritime zone, it would impede access to the high seas from a 47M stretch of French Guyana's EEZ. The use of the azimuth in the agreement prevents such a cut-off, and the area in question is high seas.

*(d)* The 1975 agreement between Kenya and Tanzania, which established a boundary "extending eastwards to a point where it intersects the outermost limits of the territorial water boundary or areas of national jurisdiction of two States"[1053], leaves an area of 111 km$^2$ outside

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1051 Exchange of Notes Constituting an Agreement between the Government of Brazil and the Government of Uruguay on the Definitive Demarcation of the Sea Outlet of the River Chui and the Lateral Maritime Border, signed at Montevideo on 21 July 1972, 1120 *UNTS* 133 (entered into force on 12 June 1975), **Annex 7 to the Counter-Memorial**. Both States claimed a territorial sea of 200 miles.

1052 Maritime Delimitation Treaty between the Federative Republic of Brazil and the French Republic, signed at Paris on 30 January 1981, *1340 UNTS 7* (entered into force on 19 October 1983), **Annex 7**, Art. 1.

1053 Exchange of Notes between the United Republic of Tanzania and Kenya Concerning the Delimitation of the Territorial Waters Boundary between the Two States, signed on 9 July 1976, United States Department of State, Office of the Geographer, *Limits in the Seas, No. 92* (July 1981), **Annex 6**, Art. 2(d).

Tanzania's maritime zones, on the Tanzanian side of the boundary line, within 200M of Kenya's baselines.

7.56. In addition to these analogous *alta mar* situations created by agreements, decisions of arbitral tribunals establishing maritime boundaries have resulted in one State's full theoretical distance-based entitlement being precluded by the boundary line.

*(a)* The 1909 award of the tribunal in the *Grisbådarna* arbitration between Norway and Sweden created an *alta mar* area of 10.8 $km^2$. This area was within four nautical miles of Norway's coast, beyond four nautical miles from Sweden's coast, and it fell on the Swedish side of the tribunal's line. Norway's theoretical entitlement to a 4M territorial sea in the *alta mar* area was precluded by the tribunal's boundary line, and this area was therefore high seas[1054]. It is clear from the pleadings of the parties in that case that the Tribunal had been made aware that this would be the effect of the application of any non-equidistant line as the maritime boundary[1055], and it chose to create a full delimitation between the parties.

*(b)* A similar situation was created by the arbitral award in the maritime delimitation between Guinea and Guinea-Bissau. The all-purpose maritime boundary established by the tribunal, in its final segment, "[s]uit une ligne loxodromique d'azimut 236°. . .jusqu'à la limite extérieure des territoires maritimes reconnue à chaque Etat par le droit

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1054 See *The Grisbådarna Case (Norway v. Sweden)*, Award, 23 October 1909, *RIAA*, Vol. XI, p. 147; and *Grisbådarna: primary boundary lines proposed by Sweden and Norway to the Tribunal and the boundary established by the Tribunal*, Figure submitted by the United States in *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, *I.C.J. Pleadings, Vol. VIII*, Map No. 30 (with annotations added by Chile), **Annex 217 to the Counter-Memorial**.

1055 See *The Grisbådarna Case (Norway v. Sweden)*, Pleadings of Norway and Sweden, **Annex 145**, Norway's Memorial, pp. 12-13; Norway's Counter-Memorial, p. 9; Sweden's Counter-Memorial, p. 312.

international général."[1056] This boundary created an *alta mar* area of 3,100 $km^2$ on Guinea's side of the azimuth, beyond 200M from Guinea's baselines and within 200M of Guinea-Bissau's baselines. The area is high seas. As is the case with the other examples mentioned above, a full delimitation has been accomplished.

7.57. The foregoing examples of other *alta mar* situations demonstrate that a State's full theoretical distance-based maritime entitlement can be precluded by a non-equidistant boundary line in areas where the adjacent State has no abutting maritime zone. This has been done by agreement and by curial decision. No "express renunciation" or "evidenced acquiescence" is necessary[1057]. The high seas status of the examples of *alta mar* areas discussed above is simply a consequence of the delimitation line. In contrast to the practice and authority set out immediately above, Peru has been unable to produce a single instance of a maritime boundary between adjacent States that has been interpreted as creating a situation in which an area on one side of the boundary line is deemed to belong to the State on the other side of that line. Because of the obvious difficulties that such a wrap-around situation would create, there are none.

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1056 *Case Concerning the delimitation of the maritime boundary between Guinea and Guinea-Bissau*, Decision, 14 February 1985, *RIAA*, Vol. XIX, para. 130.

1057 Cf. Reply, para. 6.31.

## CHAPTER VIII
## SUMMARY

8.1. This Chapter contains a concise summary of the principal aspects of Chile's position and reasoning, in compliance with Practice Direction II of the Court.

8.2. In 1947 Chile and Peru each unilaterally proclaimed sovereignty over a maritime zone having a seaward breadth of 200M. The 1947 Peruvian Supreme Decree explicitly set forth that Peru's maritime zone was to be measured "following the line of the geographic parallels". Using this method, Peru's zone was bounded in the south by a line following the parallel of latitude of the point where Peru's land boundary with Chile reaches the sea. Peru formally notified Chile of its proclamation. Chile acknowledged it without objection.

8.3. Thus, when Chile and Peru concluded the Santiago Declaration in 1952, their maritime zones abutted, but did not overlap. Delimitation was accordingly a straightforward exercise. In Article II of the Santiago Declaration the States parties claimed maritime zones of exclusive sovereignty and jurisdiction. In Article III they specified that this encompassed "exclusive sovereignty and jurisdiction over the seabed and subsoil thereof". In Article IV of the Santiago Declaration the States parties delimited their maritime zones of sovereignty and jurisdiction using the "parallel at the point at which the land frontier of the States concerned reaches the sea". The boundary parallel applied to all zones, both continental and insular. This interpretation of the Santiago Declaration is confirmed in the 1952 Minutes, in which the representatives of Chile, Ecuador and Peru recorded their agreement that Article IV of the Santiago Declaration would be "drawn on the basis that the boundary line of the jurisdictional zone of each country be the respective parallel from the point at which the borders of the countries touches or reaches the sea." Since islands were granted a 200M radial projection, delimitation of islands lying within 200M of the maritime boundary required particular attention. In Article IV of the

Santiago Declaration the States parties agreed that such insular zones were cut short where they met the general maritime boundary.

8.4. That all three States parties to the Santiago Declaration adopted that same interpretation of Article IV was confirmed in agreed minutes of their inter-State conference in 1954 which resulted in a suite of international treaties complementing those of 1952. Chile, Ecuador and Peru recorded their agreement that they "deemed the matter on the dividing line of the jurisdictional waters settled and that said line was the parallel starting at the point at which the land frontier between both countries reaches the sea". The Peruvian delegate specifically remarked that this agreement had been reached in the 1952 Santiago Declaration.

8.5. One of the treaties the three States concluded at the 1954 Conference was the Agreement Relating to a Special Maritime Frontier Zone. That Agreement refers to the "maritime frontier" in its title and in its recitals. In Article 1 it refers to "the parallel which constitutes the maritime boundary between the two countries". These acknowledgements of the existing maritime boundaries were "deemed to be an integral and supplementary part of, and in no way to deviate from" the Santiago Declaration. In the Agreement Relating to a Special Maritime Frontier Zone, the States parties confirmed their existing boundaries by creating zones of tolerance on either side of them.

8.6. In 1968 and 1969 Chile and Peru agreed to signal the precise course of their maritime boundary by building two lighthouses aligned on the parallel of latitude of Hito No. 1. This boundary marker is the most seaward point of the land boundary with the coordinates agreed between the Parties, and a point which the two States had agreed in 1930 to place on the "seashore", as the most seaward demarcated point of their land boundary. A Chile-Peru Mixed Commission of 1968-1969 recorded that its task had been to "physically mark the parallel that passes through. . .Hito No. 1". This was in accordance with the express terms of an agreement between the Parties in the form of an exchange of

notes in August 1968. This parallel was to be physically marked "in order to signal the maritime boundary". The parallel constituting the maritime boundary was agreed to have the astronomical latitude of 18° 21' 03" S. When referred to WGS84 Datum, this is a latitude of 18° 21' 00" S.

8.7. Chile and Peru have acknowledged and enforced in practice their agreed maritime boundary, on a bilateral basis and by unilateral action, over the course of half a century. A significant example of bilateral acknowledgement is the agreed signalling exercise of 1968 and 1969, recalled above. A prominent example of Peruvian confirmation of the boundary is that in its 1955 Supreme Resolution, issued shortly before the approval of the Santiago Declaration by Peru's Congress, Peru stated that its maritime zone "referred to in the Supreme Decree of 1 August 1947 and the Joint Declaration signed in Santiago on 18 August 1952"–

> "1 – shall be limited at sea by a line parallel to the Peruvian coast and at a constant distance of 200 nautical miles from it;
>
> 2 – In accordance with clause 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 reaches the sea."

8.8. An example of Chilean enforcement is that the Rules of Engagement of the Chilean Navy have relied on the parallel of latitude of the point where the land boundary reaches the sea as the maritime boundary.

8.9. Chile and Peru have committed themselves to naval and maritime cooperation and have had peaceful enjoyment of their respective maritime areas on either side of their settled boundary over a long period. In their official correspondence concerning enforcement of the maritime boundary in response to transgressions by private vessels, both States have acknowledged the existence of their agreed maritime boundary. As of 1995 such transgressions are addressed

through an agreed procedure whereby vessels found on the wrong side of the parallel are escorted to, and handed over to authorities of the other Party, at the parallel.

8.10. Not only have Chile and Peru confirmed their agreed maritime boundary over time, the existence of that agreed boundary has also been consistently acknowledged by the United Nations, through its Division for Ocean Affairs and the Law of the Sea, by the Permanent Commission of the South Pacific (CPPS), by third States in a variety of contexts, and by a plethora of respected publicists from a diversity of legal traditions.

8.11. Ecuador is the other State party to the Santiago Declaration and to the Agreement Relating to a Special Maritime Frontier Zone. Ecuador has consistently adopted the same interpretation of those treaties as Chile, and has rejected Peru's recent attempts to recharacterize them as being (i) non-binding, or (ii) applying only with respect to islands, or (iii) limited to fisheries jurisdiction.

8.12. Peru's alternative claim, to the *alta mar* area, asks the Court to extend Peru's "maritime dominion" into an area of high-seas that wraps around the northernmost 111M of Chile's EEZ. Under the Santiago Declaration, the parallel of latitude was agreed as a complete delimitation. Peru can have no maritime zone on the Chilean side of the boundary parallel. That the boundary parallel is a complete and definitive delimitation of any and all claims by Peru, excluding such problematic wrap-around, is consistent with the practice of States and international judicial bodies in agreeing or fixing maritime boundaries.

8.13. In sum, Peru attempts to convince the Court to redraw a long-settled maritime boundary. To do so, Peru, having repeatedly acknowledged the existence of that boundary for many decades, now claims before the Court that no agreement on the boundary was ever reached. Peru mischaracterizes or ignores the abundance of evidence that contradicts the case that it has contrived.

Peru asks the Court to act contrary to two elemental rules of international law: *pacta sunt servanda* and the stability of boundaries. Article 38(1) of the Court's Statute provides that the Court shall apply international conventions applicable between the Parties before it. The governing agreement in this case sets forth the maritime boundary which was agreed between Chile and Peru in 1952 and then confirmed on numerous subsequent occasions over the course of more than 50 years.

## CHAPTER IX
## SUBMISSIONS

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° 21' 00" S under WGS84 Datum; and

(iii) Peru has no entitlement to any maritime zone extending to the south of that parallel.

Alberto van Klaveren Stork
Agent of the Republic of Chile
11 July 2011

## APPENDIX A: HISTORICAL DEVELOPMENT OF TECHNIQUES TO MEASURE THE OUTER LIMIT OF MARITIME ZONES

A.1 In the years that preceded the extensive offshore claims made by the United States, Mexico, Argentina, Chile and Peru between 1945 and 1947, the law of the sea issues that preoccupied the international community were those that related to the narrow belts of territorial sea of the time. The quest for agreement on the breadth of the territorial sea was at the forefront. However, positions on this question were complicated by uncertainties about other matters, including the location of the baseline from which the breadth of the territorial sea was to be measured, and whether bays, islands, rocks and shoals should be treated either as having or not having an effect on this measurement. Also associated with the baseline questions were questions about the technique to be employed to determine the outer limit of the territorial sea—that is, the limit between the territorial sea and the high seas. These were central questions of importance for the coastal State.

A.2 Of course, the Truman Proclamation claim to the continental shelf was quickly embraced and it dramatically changed the scope of the law of the sea questions before the international community after 1945.

A.3 This Appendix examines the issue of the techniques that might be employed to determine the limit between the high seas and a distance-based zone of jurisdiction (whether it be a 3M or 200M zone, the issue is the same) as that issue stood in 1947 and 1952. The purpose is to ascertain what information on these techniques was available to the officials in Chile and Peru in 1947 and the diplomats who negotiated the Santiago Declaration in 1952. In 1952 the arcs-of-circles method (promoted by geographers and hydrographers) had not yet achieved general recognition and was less well-known than the *tracé parallèle* method (promoted by lawyers and diplomats) which described an outer limit of the territorial sea following the sinuosities of the coast.

A.4 The officials of Chile and Peru in 1947, and the diplomats who met at Santiago in 1952, did not have the benefit of three United Nations Conferences on the Law of the Sea in 1958, 1960, and 1973-1982, nor the Conventions that resulted from those Conferences. There was no codification of the method of seaward projection in 1947 and 1952. Those officials and diplomats could only have had access to the writings of certain publicists, two arbitrations concerning bays that addressed the question of how to measure the outer limit of a distance-based zone of jurisdiction, the reports from the 1930 Hague Conference, the Judgment of the Court in the 1951 *Anglo-Norwegian Fisheries* case, and the reports of the work of the first four sessions of the International Law Commission (***ILC***) in 1949, 1950, 1951 and 1952[1]. All of the subsequent work of the ILC concerning the law of the sea, in particular its reports and recommendations for the First UN Conference on the Law of the Sea, and the 1953 report of the Technical Committee advising it, was unknown to those officials and diplomats.

A.5 This Appendix reviews the documents and authorities relevant to the technique for determining the boundary between the high seas and a distance-based zone of jurisdiction available in 1952 in chronological order, beginning with the *North Atlantic Coast Fisheries* arbitration of 1910 and the *Gulf of Fonseca* judgment of 1917, and ending with the work of the ILC up to August 1952.

## The *North Atlantic Coast Fisheries* arbitration and the *Gulf of Fonseca* judgment

A.6 In the early 20th century, there were two international arbitrations that addressed bays: the *North Atlantic Coast Fisheries* arbitration and the *Gulf of Fonseca* case. In both of these cases the question arose as to how the outer limit of a distance-based zone of jurisdiction should be determined. The answer in

[1] The 1952 session of the ILC was held from 4 June to 8 August, with discussion of matters relating to the law of the sea between 15 and 25 July.

both cases was that the outer limit should be determined to run parallel to the coastal configuration—as was said in one case "following the sinuosities of the coast"[2], or, as was said in the other case, following "the contours of the respective coasts"[3]. This conceptualization of an outer limit that mirrored the coastal configuration gave rise to the *tracé parallèle* methodology.

A.7 The Award of the Tribunal in *North Atlantic Coast Fisheries* referred to the rule that the outer limit of the three mile zone was to follow the sinuosities of the coast. It held:

> "In [the] case of bays the three marine miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration and characteristics of a bay. At all other places the three marine miles are to be measured following the sinuosities of the coast."[4]

A.8 The Central American Court of Justice in the *Gulf of Fonseca* case formulated the question as follows:

> "*Thirteenth Question*.— What direction should the maritime inspection zone follow with respect to the coasts of the countries that surround the Gulf?"

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2 *The North Atlantic Coast Fisheries Case (Great Britain, United States)*, Award, 7 September 1910, *RIAA*, Vol. XI, p. 199.

3 *El Salvador v. Nicaragua*, Central American Court of Justice, Judgment, 9 March 1917, translated and reprinted in *American Journal of International Law*, Vol. 11, 1917, **Annex 146**, p. 693.

4 *The North Atlantic Coast Fisheries Case (Great Britain, United States)*, Award, 7 September 1910, *RIAA*, Vol. XI, p. 199.

The majority, consisting of Judges Medal, Oreamuno, Castro Ramírez and Bocanegra, answered that the zone should follow the contours of the respective coasts, as well within as outside the Gulf[5].

A.9 As was later pointed out by proponents of the arcs-of-circles method[6], this was a landsman way of viewing the matter: for every coastal irregularity there should be a corresponding irregularity in the outer limit. A navigator would see the matter differently, asking always the simple question of whether the arc of a circle that reflected the breadth of the territorial sea drawn from his position, intersected any part of the coast. If so, he was in the territorial sea; if not, he was on the high seas. But it was many years before the arcs-of-circles method became a recognized method embodied in the 1958 Convention on the Territorial Sea and the Contiguous Zone. Until then, tracing the outer limit to follow the sinuosities of the coast was the common formulation.

**The 1920s**

A.10 During the 1920s there were several initiatives by various learned associations, institutes and committees to develop a code of maritime jurisdiction. In 1926, the International Law Association (***ILA***) developed a Draft Convention on the Law of Maritime Jurisdiction in Time of Peace. This draft did not specify the method to be used to identify the limit between territorial waters and the high seas, except that in connection with bays and gulfs the draft refers to the limit as following the sinuosities of the coast[7].

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5 See *El Salvador v. Nicaragua*, Central American Court of Justice, Judgment, 9 March 1917, translated and reprinted in *American Journal of International Law*, Vol. 11, 1917, **Annex 146**, p. 693.

6 See S. Whittemore Boggs, "Delimitation of the Territorial Sea: The Method of Delimitation Proposed by the Delegation of the United States at the Hague Conference for the Codification of International Law", *American Journal of International Law*, Vol. 24, 1930, **Annex 188**, pp. 543-544.

7 See International Law Association, "Draft Convention on Law of Maritime Jurisdiction in Time of Peace, 1926", *American Journal of International Law Special Supplement*, Vol. 23, 1929, **Annex 112**, p. 374, Art. 7.

A.11 At the time, the rules relating to bays were very much in flux. Were closing lines allowed, and if so how long could they be? Also, what was the character of the water landward and seaward of the closing line? In this context, it is unsurprising that the 1926 ILA Draft Convention focused on the rules pertaining to bays, rather than enunciating a rule of general application. The Draft Convention took a conservative approach: there is no reference to closing lines in the text, or to the possibility that some waters of the bay might be internal waters. Thus, under this Draft Convention the waters of a bay would be formed only of a belt of territorial waters following the sinuosities of the coast and high seas. It is implicit in the specific rule that the belt of territorial waters along the coast outside of the geographical bay would also follow the sinuosities of the coast.

A.12 The same approach was followed in the "Amended Draft Convention communicated to various Governments by the League of Nations Committee of Experts for the Progressive Codification of International Law, with Questionnaire No. 2, 29 January 1926". The implicit understanding that the belt of territorial waters, in general, follows the sinuosities of the coast is once again seen in the treatment of bays. This Draft Convention refers to the belt of territorial waters as following the sinuosities of the coast[8], though in this instance a 10M closing line was provided for.

A.13 This pattern was followed again in the 1927 submission of the American Institute of International Law to the International Commission of Jurists at Rio de Janeiro[9].

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[8] See League of Nations, "Amended Draft Convention communicated to various Governments by the League of Nations Committee of Experts for the Progressive Codification of International Law, with Questionnaire No. 2, 29 January 1926", document C.196.M.70.1927.V, reproduced in *American Journal of International Law Special Supplement*, Vol. 23, 1929, **Annex 111**, p. 366, Art. 4.

[9] See American Institute of International Law, "Project No. 10 on 'National Domain' submitted to the International Commission of Jurists at Rio de Janeiro", Apri1 1927, *American Journal of International Law Special Supplement*, Vol. 23, 1929, **Annex 113**, p. 370; see, e.g., Art. 6 (bays).

A.14 A similar approach was taken at the 1928 Stockholm Session of the Institut de Droit International in its "Projet de Règlement relatif à la Mer Territoriale en temps de paix". Article 3 provided in relevant part:

> "Pour les baies dont les eaux baignent des territoires appartenant à deux ou plusieurs Etats, la Mer Territoriale suit les sinuosités des côtes."[10]

A.15 Another text of the time, the "Rules Concerning the Extent of Littoral Waters and of Powers Exercised therein by the Littoral State"[11] prepared by the Japanese Institute of International Law in 1926, made no reference to the means to determine the line dividing the "littoral waters" from the high seas, in the context of bays or otherwise. There was no attempt to define how the outer limit of "littoral waters" should be drawn.

A.16 In 1927 Philip Jessup published his seminal work, *The Law of Territorial Waters and Maritime Jurisdiction*. In respect of the determination of the outer limit of territorial waters, Jessup simply assumed that limit to be parallel to the sinuosities of the coast; in other words he assumed that the *tracé parallèle* method was the normal rule, although he did not use the term. This assumption was reflected in his chapter on bays where he discusses options for closing bays[12]. He said:

> "The first of these [options] is a strict application of the usual three-mile limit of territorial waters. Under this rule

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10 Institut de Droit International, "Projet de Règlement relatif à la Mer Territoriale en temps de paix", Session de Stockholm, *Annuaire de l'Institut de Droit International*, 1928, **Annex 114**, p. 756.

11 See Drafts prepared by the Kokusaiho-Gakkwai (l'Association de Droit International du Japon) in conjunction with the Japanese branch of the International Law Association, "Rules Concerning the Extent of Littoral Waters and of Powers Exercised therein by the Littoral State", July 1926, reproduced in *American Journal of International Law Special Supplement*, Vol. 23, 1929, p. 376.

12 As noted at para. A.11 above, at the time, the issue most often arose in the context of an exception to a bay closing line rule.

> the line of territorial waters would be traced three miles from shore, following all indentations of the coast."[13]

A.17 That Jessup assumed this to be the rule — that is, *tracé parallèle* following the sinuosities of the coast — is not surprising. He referred to the 1884 Regulations proposed by the Institut de Droit International:

> "Article 3:
>
> For bays, the territorial sea follows the sinuosities of the coast, except that it is measured from a straight line drawn across the bay at the place nearest the opening toward the sea where the distance between the two sides of the bay is 12 marine miles in width, unless a continued usage of long standing has sanctioned a greater breadth."[14]

He also referred to the decisions in *North Atlantic Coast Fisheries* and *Gulf of Fonseca* quoted in paragraphs A.7 and A.8 above.

A.18 Jessup's assumption that the outer limit of the territorial sea parallels the coastal configuration is most clearly seen in the Draft Convention on the Law of Territorial Waters that he included at the end of his volume. Article II of this Draft Convention provided:

> "Territorial waters are those waters lying between the coasts of a State and a line drawn parallel thereto at a distance of three marine miles (60 to a degree of latitude)

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13 P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, 1927, **Annex 178**, pp. 355-356.

14 *Ibid*., p. 361 (quoting Institut de Droit International, "Projet de Règlement relatif à la Mer Territoriale en temps de paix", Session de Paris, *Annuaire de l'Institut de Droit International*, Vol. 13, 1894, **Annex 110**, pp. 324-325: "Pour les baies, la mer territoriale suit les sinuosités de la côte, sauf qu'elle est mesurée à partir d'une ligne droite tirée en travers de la baie dans la partie la plus rapprochée de l'ouverture vers la mer, où l'écart entre les deux côtes de la baie est de douze milles marins de largeur, à moins qu'un usage continu et séculaire n'ait consacré une largeur plus grande.").

> from the lowest point of low-water mark. All waters lying beyond this line are high seas."[15]

A.19 After publication of *The Law of Territorial Waters and Maritime Jurisdiction*, and in the run-up to the 1930 Hague Conference, the Harvard Research Committee (including Manley O. Hudson and Philip Jessup) prepared its own draft convention with extensive commentary. As in the various proposals previously mentioned, no general rule was proposed for the method to be used to determine the outer limit of territorial waters. In respect of bays it was indicated that the outer limit "shall follow the sinuosities of the shore in the bay or river-mouth."[16]

A.20 The issue that was of most concern to the Committee (and which confirmed the assumption that the outer limit of the territorial sea paralleled the sinuosities of the coast) concerned bays that might be shared by two or more States. If the coasts of a bay belonged to one State and the bay qualified as a legal bay, a 10M bay closing line would be allowed to divide internal waters from territorial waters. However, it was assumed that if the coasts of the bay belonged to two States, and they had not agreed on a delimitation of the waters of the bay, a bay closing line would not be possible. In that case the waters of the bay would be comprised of a belt of territorial waters, the outer limit of which followed the coastal sinuosities, and an area of high seas outside the territorial belt.

A.21 To address this situation, Article 6 provided:

> "When the waters of a bay or river-mouth which lie within the seaward limit thereof are bordered by the territory of two or more states, the bordering states may agree upon a

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15 P. C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, 1927, **Annex 178**, p. 480.

16 Draft Convention on Territorial Waters, prepared by the Research in International Law of the Harvard Law School, *American Journal of International Law Special Supplement*, Vol. 23, 1929, **Annex 115**, p. 243, Art. 6.

> division of such waters as inland waters; in the absence of such agreement, the marginal sea of each state shall not be measured from the seaward limit but shall follow the sinuosities of the shore in the bay or river-mouth."[17]

A.22 Therefore, in summary, one must conclude that by the time the 1930 Hague Conference began under the auspices of the League of Nations the situation was that the outer limit of territorial waters was believed or at the very least assumed to run parallel to the sinuosities of the coast.

**The 1930 Hague Conference**

A.23 The Conference for the Codification of International Law was held at The Hague from 13 March to 12 April 1930[18]. "Territorial Waters" was one of three items on the agenda and it was addressed in the Second Committee. Mr. J.P.A. François was the Rapporteur for the Second Committee, as he would be for the ILC's work on the law of the sea.

A.24 The Second Committee's work was facilitated by 28 "Bases of Discussion" developed by a Preparatory Committee. These were in the form of convention articles with accompanying commentary. They did not include any points relating to questions concerning the outer limit of the territorial sea[19]; in consequence it is hardly surprising that nothing was accomplished at the Conference on this issue.

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17 Draft Convention on Territorial Waters, prepared by the Research in International Law of the Harvard Law School, *American Journal of International Law Special Supplement*, Vol. 23, 1929, **Annex 115**, p. 243, Art. 6.

18 See League of Nations, Acts of the Conference for the Codification of International Law Held at The Hague from 13 March to 12 April 1930, Minutes of the Second Committee, Territorial Waters, document C.351(b).M.145(b).1930.V, reproduced in Shabtai Rosenne (ed.), *League of Nations Conference for the Codification of International Law [1930]*, Vol. IV, 1975.

19 During the 1930 Hague Conference a consensus emerged to use the term "territorial sea" to designate the belt of coastal waters in which sovereignty is exercised, in preference to "territorial waters".

A.25 The arcs-of-circles method did emerge here, however. The United States delegation circulated an amendment (to Basis of Discussion No. 6) providing for the arcs-of-circles method for determining the outer limit of the territorial sea[20]. The amendment read as follows:

> "Except as otherwise provided in this Convention, the seaward limit of the territorial waters is the envelope of all arcs of circles having a radius of three nautical miles drawn from all points on the coast (at whatever line of sea level is adopted in the charts of the coastal State) or from the seaward limit of those inland waters which are contiguous with the territorial waters."[21]

A.26 Nevertheless, Sub-Committee II of the Second Committee, which was charged with drafting proposed rules for delimitation of the territorial sea, framed a baseline rule in a manner which implied that in most circumstances the outer limit of the territorial sea followed the sinuosities of the coast:

> "Base-line.
>
> Subject to the provisions regarding bays and islands, the breadth of the territorial sea is measured from the line of low-water mark along the entire coast. . . .
>
> *Observations. The line of low-water mark following all the sinuosities of the coast is taken as the basis for calculating the breadth of the territorial sea*, excluding the special cases of (1) bays, (2) islands near the coast and (3) groups

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20 League of Nations, Observations and Proposals Regarding the Bases of Discussion Presented to the Plenary Committee by Various Delegations at the Conference for the Codification of International Law held at The Hague from 13 March to 12 April 1930, document C.351(b).M.145(b),1930.V, Annex II, reproduced in Shabtai Rosenne (ed.), *League of Nations Conference for the Codification of International Law [1930]*, Vol. IV, 1975, **Annex 13**, p. 1397; also see diagrams at pp. 1399-1402.

21 *Ibid*., p. 1397.

> of islands, which will be dealt with later. The article is only concerned with the general principle."[22]

A.27 Thus, while it may be said that the arcs-of-circles method was introduced at the Hague Conference, there was no agreement on this issue. As is well-known, in large part as a consequence of differences over the breadth of the territorial sea, the Second Committee did not agree upon a draft Convention.

**The 1930 Article by Boggs**

A.28 Shortly following the Hague Conference, S. Whittemore Boggs, the Geographer of the United States Department of State, who was a member of the United States Delegation to the 1930 Conference, published an article in the *American Journal of International Law*. The purpose of the article was to expound the arcs-of-circles method to determine the outer limit of the territorial sea[23].

A.29 Boggs began by acknowledging that "[t]here appear to be no agreements or understandings which affect the manner or method of drawing the boundary line between the high sea and the territorial sea."[24] Elsewhere in the article Boggs referred to the "diverse and necessarily arbitrary methods employed by the coastal state in the absence of a general method."[25] Boggs lamented that diplomats and scholars concerned with the law of the sea were struggling to categorize particular types of coasts and to develop rules to fit the various

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22 League of Nations, Observations and Proposals Regarding the Bases of Discussion Presented to the Plenary Committee by Various Delegations at the Conference for the Codification of International Law held at The Hague from 13 March to 12 April 1930, document C.351(b).M.145(b),1930.V, Annex II, reproduced in Shabtai Rosenne (ed.), *League of Nations Conference for the Codification of International Law [1930]*, Vol. IV, 1975, **Annex 13**, p. 1419 (emphasis added).

23 See S. Whittemore Boggs, "Delimitation of the Territorial Sea: The Method of Delimitation Proposed by the Delegation of the United States at the Hague Conference for the Codification of International Law", *American Journal of International Law*, Vol. 24, 1930, **Annex 188**, p. 544.

24 *Ibid*., p. 543.

25 *Ibid*., p. 554.

categories. He found this to be a complex and ultimately fruitless exercise; it meant that principles that could have some attraction as global standards were not embraced because ultimately they would not be favoured in some coastal configurations[26]. Boggs' answer was to promote the proposal made by the United States at the Hague Conference to address the delimitation between the territorial sea and the high seas[27].

A.30 Boggs argued that it was widely accepted that the belt of the territorial sea was to be measured following the sinuosities of the coast. Boggs indicated that there were three basic techniques that could be employed:

> "(1) A line parallel to the general trend of the coast, following the sinuosities thereof;
>
> (2) A series of straight lines, parallel to straight lines drawn from point to point along the coast and from island to island; and
>
> (3) A line all points of which are precisely three miles (or any other distance) from the nearest point on the coast."[28]

A.31 The first of these methods is the *tracé parallèle* method; the second is a simplified *tracé parallèle*, drawn from straight lines approximating coastal fronts; and the third is what became known as the arcs-of-circles method. Boggs' article included the set of sketches that had been used to illustrate the proposal of the United States at the 1930 Hague Conference[29].

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26 See S. Whittemore Boggs, "Delimitation of the Territorial Sea: The Method of Delimitation Proposed by the Delegation of the United States at the Hague Conference for the Codification of International Law", *American Journal of International Law*, Vol. 24, 1930, **Annex 188**, p. 554.

27 *Ibid*., pp. 554-555.

28 *Ibid*., p. 543.

29 *Ibid*., pp. 546-547; also see League of Nations, Observations and Proposals Regarding the Bases of Discussion Presented to the Plenary Committee by Various Delegations at the Conference for the Codification of International Law held at The

**Gidel's 1934 Treatise on International Law of the Sea**

A.32 Between 1932 and 1934 Gilbert Gidel published his treatise, *Le droit international public de la mer*. Part 2 of Volume III contains his discussion of the determination of the outer limit of the territorial sea[30]. Gidel (who was present at the 1930 Conference) was heavily influenced by Boggs. Gidel largely repeated the arguments found in Boggs' 1930 article; Gidel's treatise even included the sketches used by the United States to illustrate its proposal at the Hague Conference.

A.33 Gidel discussed different methods of measuring the outer limit of the territorial sea and expressed a preference for the arcs-of-circles method. He noted that Münch had described the application of this method in his 1934 work *Die Technischen Fragen des Küstenmeers*, and this method had been used for measuring the outer limit of territorial seas for convex coasts. He noted that the advantage of the method was that it eliminated uncertainties for the navigator. However, although Gidel considered the arcs-of-circles method to be preferable, he was cautious about its general application, stating:

> "En réalité il n'est pas de règle suffisamment générale par elle-même pour faire abstraction des configurations particulières des côtes au-devant desquelles il s'agit de faire le tracé de la mer territorial, puisque la méthode de la courbe tangente, tout en s'imposant de préférence à toute autre méthode générale de tracé de la limite extérieure, a besoin d'être completée dans son application par diverses éliminations et corrections" [31].

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Hague from 13 March to 12 April 1930, document C.351(b).M.145(b),1930.V, Annex II, reproduced in Shabtai Rosenne (ed.), *League of Nations Conference for the Codification of International Law [1930]*, Vol. IV, 1975, **Annex 13**, pp. 1399-1402.

30 See G. Gidel, *Le droit international public de la mer, Vol. III*: *La mer territoriale et la zone contiguë*, 1934, pp. 153-192.

31 *Ibid*., pp. 515-516.

**The 1951 *Anglo-Norwegian Fisheries* Case**

A.34 The *Anglo-Norwegian Fisheries* case was concerned with the lawfulness of Norway's straight baseline system. The issue of the outer limit of the territorial sea was a factor in the case, since it related to the baseline in some ways.

A.35 The Court said:

> "Three methods have been contemplated to effect the application of the low-water mark rule. The simplest would appear to be the method of the *tracé parallèle,* which consists of drawing the outer limit of the belt of territorial waters by following the coast in all its sinuosities. This method may be applied without difficulty to an ordinary coast, which is not too broken. Where a coast is deeply indented and cut into, as is that of Eastern Finnmark, or where it is bordered by an archipelago such as the 'skjærgaard' along the western sector of the coast here in question, the base-line becomes independent of the low-water mark, and can only be determined by means of a geometrical construction. In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coastline to be followed in all its sinuosities. Nor can one characterize as exceptions to the rule the very many derogations which would be necessitated by such a rugged coast: the rule would disappear under the exceptions. Such a coast, viewed as a whole, calls for the application of a different method; that is, the method of base-lines which, within reasonable limits, may depart from the physical line of the coast.
>
> It is true that the experts of the Second Sub-Committee of the Second Committee of the 1930 Conference for the codification of international law formulated the low-water mark rule somewhat strictly ('following all the sinuosities of the coast'). But they were at the same time obliged to admit many exceptions relating to bays, islands near the coast, groups of islands. In the present case this method of the *tracé paralléle*, which was invoked against Norway in the Memorial, was abandoned in the written Reply, and

> later in the oral argument of the Agent of the United Kingdom Government. Consequently, it is no longer relevant to the case. 'On the other hand', it is said in the Reply, the *courbe tangente*—or, in English, 'envelopes of arcs of circles'—method is the method which the United Kingdom considers to be the correct one.
>
> The arcs of circles method, which is constantly used for determining the position of a point or object at sea, is a new technique in so far as it is a method for delimiting the territorial sea. This technique was proposed by the United States delegation at the 1930 Conference for the codification of international law. Its purpose is to secure the application of the principle that the belt of territorial waters must follow the line of the coast. It is not obligatory by law, as was admitted by Counsel for the United Kingdom Government in his oral reply. In these circumstances, and although certain of the Conclusions of the United Kingdom are founded on the application of the arcs of circles method, the Court considers that it need not deal with these Conclusions in so far as they are based upon this method."[32]

A.36 Sir Humprey Waldock, who was one of counsel for the United Kingdom in the case, published an article in the *British Yearbook of International Law* immediately following the Judgment. He respectfully took the Court to task:

> "The Court refers to 'this method of the tracé parallèle' as if it was the same thing as a base-line following the tide-mark along the sinuosities of the coast, whereas *tracé parallèle* concerns *the outer limit of territorial waters.* This is a fundamental confusion and, in any event, the so-called 'method of *tracé parallèle*' is not really a method of delimiting even the outer limit of territorial waters. *Tracé parallèle* was an expression coined by Gidel to describe a *misconception* which he believed some writers to have in regard to the outer rim of territorial waters. The

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[32] *Fisheries Case (United Kingdom v. Norway), Judgment, I.C.J. Reports 1951*, pp. 128-129.

> misconception is that the outer rim is a line drawn parallel to the shore-line and *exactly reflecting each and every sinuosity of the shore*. . .”[33]. (Emphasis in the original.)

A.37 Whether this criticism is valid or not, the language of the Judgment provides endorsement for *tracé parallèle* and dismisses the arcs-of-circles methodology as a “new technique”, “not obligatory by law”. In light of the Judgment, the continuing use of the *tracé parallèle* in State practice in this period was perfectly understandable.

**The writings of publicists between 1945 and 1952**

A.38 After 1945 the attention of publicists turned to the continental shelf. There was a great deal of uncertainty and divergence of opinion as to the basis of title over the continental shelf and, in part as a result of this uncertainty, also as to the spatial extent of the continental shelf in a legal sense and as to the entitlements of the coastal State and third States in that zone. (Furthermore, Latin American States were proceeding with an effort to develop regional international law based on 200M claims[34].) There was very limited discussion of the method of measurement of the outer limit of a coastal State’s territorial sea. Nevertheless, *tracé parallèle* was still used and referred to. For example, Herbert A. Smith, Professor Emeritus of International Law at the University of London, touched lightly on the issues under consideration in the second edition of *The Law and Custom of the Sea*, published in 1950. He said: “[t]he outer limit of territorial waters is parallel to the base line at a distance of three miles.”[35]

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33 C. H. M. Waldock, “The Anglo-Norwegian Fisheries Case”, *British Yearbook of International Law*, Vol. 28, 1951, **Annex 187**, p. 133.

34 See footnote 291 (p. 78) of the Rejoinder and the references contained therein.

35 H. A. Smith, *The Law and Custom of the Sea*, 2nd edn, 1950, **Annex 184**, diagram at p. 11. This sketch suggests the *tracé parallèle* methodology with reference to the outer limit of the territorial sea.

**The Work of the International Law Commission**

A.39 The ILC was established as a subsidiary body of the United Nations General Assembly in 1947 to give effect to Article 13 of the Charter of the United Nations, which calls in relevant part for the progressive development of international law and its codification. In 1949 the ILC placed 14 items on a provisional list of topics for codification, including the régime of territorial waters and the régime of the high seas.

A.40 The régime of the high seas was identified as one of three topics to receive priority attention[36]. The ILC elected Mr. J.P.A. François of the Netherlands as Special Rapporteur to study the régime of the high seas and prepare a report for consideration in the second session.

A.41 The second session of the ILC commenced on 5 June 1950. The Special Rapporteur submitted his report on the régime of the high seas, which included discussion both of the breadth of the territorial sea and the régime of the continental shelf[37]. The Secretariat also prepared a memorandum on these issues[38]. There was no discussion of the technique to determine the outer limit of the territorial sea in these documents, nor was the issue taken up in the general debate. During the second session, in response to a request from the General Assembly, the ILC added the issue of the régime of the territorial sea to the topics on its priority list[39].

A.42 The third session of the ILC commenced on 16 May 1951. The technique of determining the outer limit of the territorial sea and the continental shelf was

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36 The other two topics to receive priority attention were the law of treaties and arbitral procedure. It was understood that the continental shelf would be addressed under the high seas heading.

37 See United Nations, *Report of the Special Rapporteur to the ILC* (2nd session of the ILC (1950)), document A/CN.4/17.

38 See United Nations, *Memorandum on the Regime of the High Seas submitted by the Secretariat to the ILC* (2nd session of the ILC (1950)), document A/CN.4/32.

39 See United Nations, *Report of the ILC to the General Assembly* (2nd session of the ILC (1950)), document A/1316, p. 366, para. 18.

not discussed during this session. The ILC decided to initiate work on the régime of the territorial sea and appointed Mr. François as Special Rapporteur.

A.43 The Special Rapporteur submitted his report on the régime of the territorial sea at the fourth session of the ILC held in 1952. This session commenced on 4 June 1952 and concluded on 8 August of that year, just days before the Santiago Declaration on 18 August. The report of the Special Rapporteur contained 23 draft articles on the subject, along with commentary. Article 5 concerned baselines. The commentary to Article 5 referred to the *Anglo-Norwegian Fisheries* Judgment and its consideration of the arcs-of-circles and *tracé parallèle* methods[40]. In these respects the report reached no specific conclusions, but it did formulate a straight-baseline article along the lines suggested by the Judgment. The ILC discussed Article 5 during its 169th and 170th meetings on 22 and 23 July 1952[41]; however, the *tracé parallèle* and arcs-of-circles techniques for establishing the outer limit of the territorial sea were not discussed.

A.44 The ILC decided that the Special Rapporteur might make contact with experts to clarify certain technical aspects of the subject of delimitation, and requested him to provide a further report with a revised draft and commentary at the fifth session[42]. The ILC also decided to ask governments to furnish information on State practice and any observations they might wish to make on the question of the delimitation of the territorial sea between two adjacent States[43].

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40 See United Nations, *Report of the Special Rapporteur to the ILC* (4th session of the ILC (1952)), document A/CN.4/53, **Annex 118**, p. 33, para. 2.

41 See United Nations, *Summary Record of the 169th and 170th Meetings of the ILC* (4th session of the ILC (1952)), document A/CN.4/Ser.A/1952, pp. 169-179.

42 See United Nations, *Report of the ILC to the General Assembly* (4th session of the ILC (1952)), document A/2163, p. 68, paras 39-40.

43 *Ibid*., p. 68, para. 39. In response, see, e.g., Letter of 16 March 1956 from the Permanent Mission of Chile to the United Nations, reproduced in United Nations, *Comments by Governments on the Provisional Articles Concerning the Regime of*

A.45 With regard to the régime of the high seas, the ILC decided to defer consideration of the Special Rapporteur's report until the fifth session without substantive discussion[44].

A.46 Thus, as of August 1952, the ILC had reached no conclusions of any sort regarding techniques to delimit the territorial sea from the high seas[45].

**Summary and Conclusion**

A.47 There can be no doubt that in 1952 the outer limit of a distance-based zone of jurisdiction followed the sinuosities of the coast—*tracé parallèle*—remained in the mainstream of legal thinking. The Court's 1951 Judgment had, if anything, elevated *tracé parallèle* and diminished the arcs-of-circles methodology. With the 1958 Convention on the Territorial Sea and the Contiguous Zone, the arcs-of-circles method was recognized as an accepted method of measurement of the outer limit of a distance-based zone of jurisdiction[46]. In hindsight, the Technical Committee report to the ILC in 1953 was very influential on this issue[47]. However, that report was issued only after the diplomats meeting in Santiago, in August 1952, had negotiated and adopted the Santiago Declaration.

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*the High Seas and the Draft Articles on the Regime of the Territorial Sea adopted by the International Law Commission at its Seventh Session* (8th session of the ILC (1956)), document A/CN.4/99/Add.1, **Annex 17**, pp. 42-43.

44 See United Nations, *Summary Record of the 182nd Meeting of the ILC* (4th session of the ILC (1952)), document A/CN.4/Ser.A/1952, p. 250.

45 See further discussion of the work of the ILC in the Counter-Memorial, paras 2.151-2.158.

46 See Convention on the Territorial Sea and the Continuous Zone, signed at Geneva on 29 April 1958, 516 *UNTS* 205 (entered into force 10 September 1964), Art. 6.

47 See Counter-Memorial, para. 2.154 and paras 2.157-2.158.

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| **3.** | Decree with Force of Law No. 292 of 25 July 1953 approving the Organic Law of the Directorate-General of the Maritime Territory and Merchant Navy |
| **4.** | *Plan Convenio Tripartito* of 12 May 1955 by the Office of Chief of Staff of the First Naval Zone |
| **5.** | Report No. 16 of May 1968 on the meeting at the Chile-Peru frontier, by Alejandro Forch, Chief of the International Boundaries Division |
| **6.** | Record of the first Meeting of the second round of Chile-Peru Discussions, 5 July 1976 |
| **7.** | Record of the fourth Meeting of the second round of Chile-Peru Discussions, 8 July 1976 |
| **8.** | Decree with Force of Law No. 2222 of 21 May 1978 substituting the Navigation Law |

| | |
|---|---|
| **9.** | Law No. 18,892 (as amended), General Law on Fisheries and Aquaculture, consolidated text published in Decree No. 430 of 21 January 1992 |
| **10.** | Message from the President to the House of Deputies of the Congress with draft agreement relating to UNCLOS and its Annexes, Bulletin No. 1425-10, 28 October 1994 |
| **11.** | Supreme Decree No. 464 of 31 July 1995 |
| **12.** | Geographic Positions of Points of the Normal Baselines from which the National Maritime Jurisdictions have been Drawn, printed on the reverse of SHOA, Chart No. 6, *Rada de Arica a Caleta Matanza*, 1st edn, 2000 |
| | **OFFICIAL TEXTS, OFFICIAL STATEMENTS, OFFICIALLY AUTHORIZED TEXTS AND INTERNAL DOCUMENTS: PERU** |
| **13.** | Foreign Affairs Committee of Congress, Report of 4 May 1955 concerning the Agreements and Conventions signed by Peru, Chile and Ecuador at Santiago, on 18 August 1952, and at Lima on 4 December 1954 |
| **14.** | Geographic Advisor's Office of the National Institute of Planning in the Office of the President, *Atlas Histórico Geográfico de Paisajes Peruanos*, 1963-1970 |
| **15.** | Ministry of Navy, *Lista de Faros 1971 – Costa del Perú,* 1971 |
| **16.** | Directorate of Hydrography and Navigation of the Navy, *Lista de Faros y Señales Náuticas – Costa del Perú*, 5th edn, 1976 |
| **17.** | Supreme Decree No. 002-87-MA of 11 June 1987 approving the Regulation of Captaincies and Maritime, Fluvial and Lacustrine Activities |
| **18.** | Ministry of Foreign Affairs, *El Perú en Gráficos*, published in *El Comercio*, 16 October 1988 |
| **19.** | Directorate of Hydrography and Navigation of the Navy, *Derrotero de la Costa del Perú, Vol. II*, 3rd edn, 2001 |

| | |
|---|---|
| **20.** | Report of the Foreign Affairs Committee of the Congress of the Republic concerning Draft Legislative Resolution No. 813/2001-CR, 4 October 2004 |
| **21.** | Law No. 29687 of 19 May 2011, amending Law No. 28621 of 3 November 2005: Baselines Law of the Maritime Dominion of Peru |
| **22.** | National Institute of Statistics and Information of Peru, *Perú: Compendio Estadístico 2008* |

**DOCUMENTS OF INTERNATIONAL ORGANIZATIONS AND OTHER BODIES**

| | |
|---|---|
| **23.** | United Nations General Assembly, *Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction*, Vol. V, 1973 |
| **24.** | J. M. Bákula, Secretary-General, *Evaluación de los Convenios de la CPPS*, May 1978 |
| **25.** | CPPS, *Publicación de la Secretaría General 1999*, 1999 |

**OTHER DOCUMENTS**

| | |
|---|---|
| **26.** | *The Grisbådarna Case (Norway v. Sweden)*, Memorial and Counter-Memorial of Norway and Counter-Memorial of Sweden |
| **27.** | Western Geophysical Company of America, *Final Field Operation Report*, March-November 1977 |
| **28.** | Woods Hole Oceanographic Institution, Upper Oceans Processes, Technical Report 04-01, "Stratus Ocean Reference Station (20°S, 85°W), Mooring Recovery and Deployment Cruise, R/V *Revelle* Cruise Dana 03, November 10-November 26, 2003" |
| **29.** | *Historia de las Negociaciones Chileno-Bolivianas: 1975-1978* by the Ministry of Foreign Affairs of Chile, 1978 |

| | |
|---|---|
| **30.** | "Guidelines for Entering to Peruvian Waters published by Inchcape Fishing Services" |

**WRITINGS OF PUBLICISTS**

| | |
|---|---|
| **31.** | M. F. Agüero Colunga, *Delimitación Marítima del Perú con Ecuador y con Chile*, 1990 |
| **32.** | M. F. Agüero Colunga, *Consideraciones para la delimitación marítima del Perú*, 2001 |
| **33.** | A. Arias-Schreiber, "Fundamentos de la Soberanía Marítima del Perú", *Revista de Derecho y Ciencias Políticas*, XXXIVth year, Nos I-II, 1970 |
| **34.** | A. Arias-Schreiber, "Delimitación de la frontera marítima entre Perú y Chile", *Revista Peruana de Derecho Internacional, Vol. LI*, January-June 2001, No. 117 |
| **35.** | J. M. Bákula, *El Dominio Marítimo del Perú*, 1985 |
| **36.** | J. M. Bákula, *Perú: Entre la Realidad y la Utopía – 180 Años de Política Exterior*, Vol. II, 2002 |
| **37.** | E. Collins Jr. and M. A. Rogoff, "The International Law of Maritime Boundary Delimitation", *Maine Law Review*, Vol. 34, 1982 |
| **38.** | G. Faura Gaig, *El Mar Peruano y sus Límites*, 1977 |
| **39.** | M. Flores Palomino, *La Zona Costera del Perú: Un Ensayo de Interpretación y Proposición de su Organización para su Administración*, 1989 |
| **40.** | D. N. Hutchinson, "The Significance of the Registration or Non-Registration of an International Agreement in Determining Whether or Not it is a Treaty", in S. Davidson (ed.), *The Law of Treaties*, 2004 |
| **41.** | P. Martínez de Pinillos, *Geografía Humana del Perú y del Mundo*, 1952 |

**42.** M. Pratt (ed.), *Jane's Exclusive Economic Zones 2002-2003*, 4th edn, 2002

**43.** M. Rodríguez Cuadros, *La Soberanía Marítima del Perú – La Controversia entre el Perú y Chile*, 1st edn, 2010

**44.** M. Vegas, "El Mar Peruano: Un Ambiente Natural – La Conservación y Utilización de sus Recursos", in E. Ferrero Costa (ed.), *El Perú, El Medio Ambiente y El Desarrollo*, 1992

**45.** A. Wagner de Reyna, *Los Límites del Perú*, 1961