

Peru v. Chile: The International Court of Justice Decides on the Status of the Maritime Boundary

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Abstract

The ICJ's decision addresses facts and themes related to the question whether or not a maritime boundary extended to 200-nautical miles had been set between Chile and Peru. Thus, the ICJ decision is deeply interwoven with the history of the maritime zone of 200–nautical miles and its Latin American roots. The task of the Court was to ascertain whether a delimited boundary had been agreed, and if that had been the case, whether it has been established in connection with the long standing proclamations of an extended maritime zone of 200 nautical miles, first unilaterally and then multilaterally by the 1952 Santiago Declaration on the Maritime Zone and further agreements. The explicit reference to a delimitation line embedded in successive agreements was settled in favor of an implicit agreement enshrined in the terms of the 1954 Agreement of a Maritime Frontier Zone, preceded by a subtle crystallization of a delimitation process prior to it. The point was deduced from Article I of the 1954 Agreement which explicitly states that “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”.

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I. Introduction

1. On 27 January 2014, the International Court of Justice, rendered its decision in the *Maritime Dispute (Peru v. Chile)*¹ case and by fifteen votes to one, the Court said that

(2) ...

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

Then, the judgment continues and states that

(3) By ten votes to six,

Decides that this initial segment runs up to a point (Point A) situated at a distance of 80 nautical miles from the starting-point of the single maritime boundary; [...]

From that distance, the line would be composed of straight lines in a south-westward direction up to a distance of the point of intersection (at Point B) with the 200-nautical-mile limit from the baselines from which the territorial sea of Chile is measured, and

From Point B, the single maritime boundary shall continue southward along that limit until it reaches (Point C) of the 200-nautical-mile limits measured from the baselines from which the territorial seas of the Republic of Peru and the Republic of Chile, respectively.

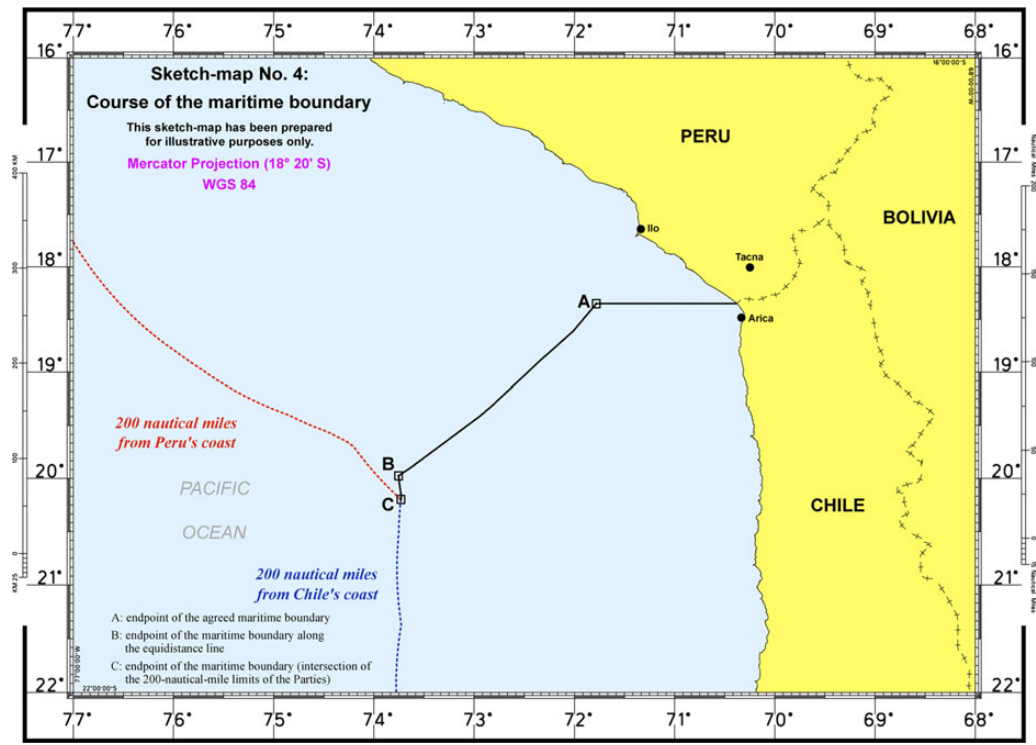
2. These phrases compose the core of the decision about the line of delimitation whose main essentials referred to the existence or non-existence of an agreement consisting of an all-purpose line delimiting the respective maritime zones, following a parallel of latitude. (See Figure below)

Besides, the discussion was enriched by the issue of the starting point of the maritime boundary and the role of Hito No. 1 located on the seashore, as a reference point to identify the said starting point. Peru also contended its right to an area outside Chile's exclusive economic zone or continental shelf but within the limit of 200 nautical miles from its coast. This last issue was not addressed in the decision of the Court.

3. For about six years, the uniqueness of the case as regards the history of the extended maritime zones and the status of the sources invoked by the parties to support their claims have been under the attention of the Court. Was it an ordinary example of delimitation appealing to the three stages procedure as the normal methodology to apply in any delimitation case as the ICJ had previously stated for extended maritime zones?²

1 <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=88&case=137&code=pch&p3=4>.

2 In the Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (*Nicaragua v. Honduras*), Judgment, ICJ Reports 2007, para 271, the ICJ stated that "the so-called equitable principles/relevant circumstances method may usefully be applied, as in these maritime zones this method is also



(Adapted by the author from the ICJ sketch-map No.4)

Or, was it rather a case in which no such stages were to be tracked as the parties had already agreed on the applicable method and were acting in compliance with it?

4. In the process, the Court sought first to ascertain whether there was any pre-existing agreement relating to the delimitation of the maritime areas; and then for an area where the agreement—according to the tribunal—did not apply, it had recourse to the methodology based on elements of geography, equidistance and relevant or special circumstances.

5. As the 2014 decision shows, the Court's construction of a line in an area west to the 80 nautical miles distance from the coast and in the absence of agreement, did not depart dramatically from what was enunciated in previous cases in respect of the successive stages of the delimitation process³ structured around the drawing of a provisional equidistance line unless there were compelling reasons preventing that.

6. The theoretical conceptualization invoked by the ICJ in the *Black Sea* case,⁴ should serve to assess the existence of relevant circumstances which might call for an adjustment of the line in order to achieve an equitable result⁵; this process could be characterized as judicial creativity.⁶ Whether the preference of the tribunals is to advance a result-oriented equity or a corrective—equity approach, as Tanaka postulates, is a matter of judgment and interpretation. When the tribunal conducts the final disproportionality test to assess whether the effect of the adjusted line, produces a marked disproportion in the shares of the maritime areas to the lengths of the relevant coasts, it is both, the result as well as the predictability of the line, that are in place.

sued to achieving an equitable result: “This method, which is very similar to the equidistance/special circumstances method applicable in delimitation of the territorial sea, involves first drawing an equidistance line, then considering whether there are factors calling for the adjustment or shifting of that line in order to achieve an ‘equitable Result’”. (Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, ICJ Reports 2002, 441, para. 288)”.

3 The Court's decision refers to the Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, ICJ Reports 2009, 101–103, paras. 115–122 and to the Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, ICJ Reports 2012 (II), pp. 695–696, paras. 190–193.

4 Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment of 2 February 2009, para 116.

5 It is an inference of the terms used in Articles 74, 1 and 83, 1 of the United Nations Convention on the Law of the Sea, commented in the Eritrea/Yemen arbitration where it was acknowledged that they were meant to get agreement on a very controversial matter, were “consciously designed to decide as little as possible”. Award of the Arbitral Tribunal in the Second Stage—Maritime Delimitation, 17 December 1999, para. 116. http://www.pca-cpa.org/showpage.asp?pag_id=1160.

6 Yoshifumi Tanaka, *The International Law of the Sea* (2012), 214–215.

7. In the backstage of the instance, the case related to a wider discussion about the limits of the power of an international court to derogate from the legislative power of states. It means that in the event that there is a general law of maritime delimitation, is it composed of imperative principles, or its normative character reflects the assumption that parties are free to choose their own line, whether simple or composite, selecting the relevant factors and circumstances, and agreeing on a line of their own choice?

8. The fact that the Court's decision does not expressly address this issue does not mean that it leaves open the question of the dispositive status of the norms of the United Nations Convention on the Law of the Sea applicable to delimitation of maritime zones (Articles 15, 74 and 84). The said status is confirmed by the fact that the Convention allows state parties to declare in writing that they do not accept the application of the compulsory dispute settlement procedures in respect of Article 298(1), "(a)(i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations ...". Even more, it would have gone beyond the will of the parties to sustain that a *jus cogens* normative character underlies the law of delimitation, as it may be the case for other provisions of the United Nations Convention on the Law of the Sea, where non-derogable principles are embodied therein.⁷

9. As the subject matter of the case, the ICJ's decision had to address facts and matters that apparently looked simple: whether or not a maritime boundary extended to 200-nautical miles had been set and which was the legal foundation for the existence of such a line. Thus, the ICJ decision had to be deeply interwoven with the history of the maritime zone of 200–nautical miles.

10. In words of contemporary international law, the Court had to ascertain whether a delimited boundary had been agreed either expressly or tacitly, in connection with the long standing proclamations of an extended maritime zone of 200 nautical miles. This was not new for the Court, since in cases such as *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)* (2002), and *Greenland and Jan Mayen case* (1993), the question of whether a prior agreement on maritime delimitation treaty applied was disputed by the parties.⁸

11. In the future, the idea that the maintenance of peaceful and friendly relations—a real concern in other cases⁹—between the parties would have been strengthened by the

7 Vladimir Ibler, *Jus Cogens and the Law of the Sea, Liber Amicorum Lucius Caffisch, Promoting Justice, Human Rights and Conflict Resolution through International Law* (2007), 748–765.

8 Shi Jiuyong, *Maritime Delimitation in the Jurisprudence of the International Court of Justice*, *Chinese JIL* (2010), 277–278.

9 As it was the case between Libya and Chad before adoption of the 1989 agreement and subsequent submission of the case to the ICJ. *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, ICJ Reports 1994, 6.

decision of the Court, as anticipated by the opinion of a member of the Court,¹⁰ may be appealing to analysts, but it does not appear in the proceedings as a substantive point of the merits of the case, where no provisional measures were called upon to help. It is also worth noting that neither Peru nor Chile advanced before the Court the idea that the existing *statu quo* and the delimitation under dispute might entail a breach of their relations or that peace was being threatened. Thence, the authoritative value of the decision lies more in the certainty of a line, than in abstract ideas of a rather political character.

II. Contentions of the Parties: narratives of a controversy

12. In 2000, Peru's disagreement with the status of the parallel passing through Hito No.1¹¹ of the border with Chile was made official; Peru alleged that a map published by the Chile was not in conformity with the existing situation, whereas no treaty had settled the maritime boundary.

13. In 2008, Peru's application to the ICJ would contend that the existence of a bilateral legal controversy over "the delimitation of the maritime spaces between both countries, starting from the point where the land frontier between Peru and Chile meets the sea pursuant to the 1929 Treaty on Boundaries".

14. Then, it went on to request that the Court determine the maritime boundary on the basis of principles and norms of customary international law, and that the Court recognize its exclusive sovereign rights over an area extending beyond 200 nautical miles of Chilean territory, considered high seas at that time.

15. Chile's response differed with this approach. The essence of the defense was that the maritime delimitation with Peru had been established by valid long-standing treaties between the parties, which had been enforced and implemented in law and in practice. These treaties were of a tripartite character and had been adopted at a very earlier stage of the establishment of extended maritime zones up to 200-nautical miles. Treaties invoked by Chile were mainly the 1952 Santiago Declaration on the Maritime Zone and the 1954 Special Maritime Frontier Zone Agreement, both of which had been registered as treaties with the United Nations.¹²

10 Para. 18 of the Declaration of Judge Sepúlveda-Amor appended to the Judgment of 27th January 2014.

11 The Joint Report of the Delegations of the parties in 1969, subscribed an Act stating that "The undersigned Heads of Delegations of Chile and of Peru submit to their respective Governments the present Report on the state of repair of the boundary markers in the section of the Chile-Peru frontier which they have had the opportunity to inspect on the occasion of the works which they have been instructed to conduct in order to verify the location of Boundary Marker number one and to signal the maritime boundary". The Hito is located at the "orilla del mar" as the successive Actas signed in 1930 by delegates and plenipotentiaries of Chile and Peru indicated.

12 The 1952 Declaration on the Maritime Zone, 1006(I) UNTS No.14758; The 1954 Agreement on a Special Maritime Frontier Zone, 2274 UNTS No.40521.

16. The story of the case had to be traced back to 1947, when Chile and Peru issued concordant unilateral Declarations concerning an exclusive maritime zone over a maximum distance up to 200 miles, reserving the right to extend it even further. The exclusiveness of the new zone derived from the sovereign nature of the rights which had been embedded into the political and legal strategy of the two coastal states. Moreover, Peru's Proclamation of 1947 (Supreme Decree No.781), established that its maritime zone should be measured "following the line of the geographic parallels". This concept was recalled again in Supreme Resolution No. 23 of 1955.¹³

17. In turn, Chile would sustain that the use of the word "perimeter" which, read in conjunction with the former reference to parallels gave a sense of a delimited area to be possessed by a State, was an essential term to interpret the delimitation agreement. Chile went on to say that the Peruvian area abutting Chile should therefore be limited in the south by a line following the parallel of latitude corresponding to the point where the land boundary reached the sea, as the 1952 Declaration set.

18. In the same vein, Chile asserted that articles III and IV of the Declaration of Santiago of 1952 on the Maritime Zone, had to be read in conjunction as applicable to the whole maritime zone and not only to islands projecting 200-nautical miles over a neighboring maritime zone. According to said articles, exclusive jurisdiction and sovereignty over each maritime zone was to encompass exclusive sovereignty and jurisdiction over the seabed and the subsoil thereof. On the other hand, Article II of the Santiago Declaration provided the foundation of the common view of Chile, Ecuador and Peru over their "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".

19. Then, the Declaration remarked:

In the case of island territories, the zone of 200 nautical miles shall apply to the entire coast of the island or group of islands. If an island or group of islands belonging to one of the countries making the declaration is situated less than 200 nautical miles from the general maritime zone belonging to another of those countries, the maritime zone of the island or group of islands shall be limited by the parallel at the point at which the land frontier of the States concerned reaches the sea.

The interpretation of that provision proved to be a difficult issue before the Court as the tribunal had to strike a balance between views favoring the existence of an explicit delimitation while others were inclined towards the thesis of an implicit agreement on delimitation. In practice, the judgment does not make clear what elements lead to differentiate between the two concepts in the circumstances of the case.

20. The explicit reference to a delimitation line and the implicit delimitation character of the agreements was settled in favor of an implicit agreement enshrined in the

13 Annex 9, Peru's Memorial to the ICJ, 2009.

terms of the 1954 Agreement and the admission of a subtle crystallization of the delimitation prior to that date. The point was deduced from Article I of the 1954 Agreement which explicitly states that “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”. Thence, between the limited effect of the 1952 Santiago Declaration and the full effect of the 1954 Agreement, the practice between the parties appears to have consolidated a legally binding parallel line.

21. The proceedings of the 1952 Santiago Conference leading to the adoption of the 1952 Santiago Declaration and the immediate diplomatic and domestic practice of the two States shed light in this respect,¹⁴ but the Court did not follow that line of argument. It is noticeable that in this case the Court did not have to deal with allegations on the part of Chile that fishing, research and patrolling activities had given effect to a tacit agreement. There was no sign either that Chile relied on a tacit agreement¹⁵ or that a traditional line like the one claimed by Honduras against Nicaragua, where the basis of the line was to be found in the principle of *uti possidetis iuris*.¹⁶ Despite the practice of a continuing exercise of jurisdiction in the area south of the parallel of Hito No.1, the hypothesis of a delimitation arising from an existing historical practice,¹⁷ as referred to in other cases, was not invoked as a source of the delimitation.

22. The case was also surrounded by a set of contextual elements. The main features of this context could be found in the Permanent Commission for the South Pacific setting, which was specifically created as an international organization by the Convention on the Organization of the Permanent Commission of the Conference on the Exploitation and Conservation of the Maritime Resources for the South Pacific signed by Chile, Ecuador and Peru, in Santiago, on 18 August 1952.¹⁸

23. The background of the Permanent Commission was directly related to the Declaration on the Maritime Zone of 1952, signed in Santiago on 18 August 1952.

14 The 1952 Minutes of the 1952 Conference provide substantive information to this respect, in particular in the Legal Affairs Committee. Annex 56 to Peru’s Memorial to the ICJ.

15 On tacit agreements: Hugh Thirlway, 2 *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence* (2013), 1223–1225.

16 *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, ICJ Reports 2007, 659, paras. 86–98; 229–258.

17 As it was discussed in the 1999 *Eritrea/Yemen Award of the Arbitral Tribunal in the Second Stage of the Proceedings (Maritime Delimitation)* paras 49 and 61 (http://www.pca-cpa.org/showpage.asp?pag_id=1160).

18 Article 1 of the Convention on the Organization of the Permanent Commission of Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific signed in Santiago, on 18 August 1952.

A number of agreements and resolutions of the Commission clearly indicate that there was no dispute as to the delimitation between the three parties (Chile, Ecuador and Peru), Chile sustained.

24. Thus, it becomes understandable why in the written proceedings, the question of Ecuador as a party to the tripartite treaties was addressed by the two contenders. Ecuador, although having made known its interest in being treated according to Article 63 of the Statute of the Court, in respect of its entitlement to be notified as party to treaties that may be in question in cases between other states,¹⁹ decided not to seek to intervene. There was enough evidence that Ecuador's position was closer to the delimitation status of the disputed treaties than supportive of a revision thereof.²⁰

25. When the proceedings were well advanced, Ecuador edited an official nautical Chart (No. IOA 42), dated 12 July 2010,²¹ depicting Ecuador's maritime boundary with Peru; Chile sustained that the Chart evidenced a steady and consistent position regarding the maritime boundary. Peru would reiterate that this certitude was due to the presence of islands, which rendered the Declaration of Santiago applicable only to Ecuador.²²

26. As a result, while the argument made by Chile was that Ecuador's conduct [the Chart and previous statements] confirmed that the delimitation did not limit their effect to the presence of islands, Peru had recourse in 2011 to achieving an agreement with Ecuador which would consist of an exchange of notes confirming *inter alia*, that a sketch-map attached therein formed "an integral part" of their "understanding" of their maritime boundary.²³ The fact is that the agreed sketch-map showed the maritime boundary following the parallel of latitude as depicted in Ecuador's Chart IOA 42, extending 200M westwards from the starting point identified by Ecuador itself.

19 Note 4-4-03/09 of the Ambassador of Ecuador to the Netherlands, 4 May, 2009, delivered by the Registrar to the parties on 8 May, 2009. Chile's diplomatic archives.

20 Among other documents, the Note No. 7811 2006/GM of 17 February 2006 from the Ecuadorean Minister of Foreign Affairs to the Peruvian Minister of Foreign Affairs is an explicit expression of this standing. Annex 107 of Chile's Rejoinder to the ICJ.

21 Ecuador's Decree of 2 August 2010 (No. 450) conferring approval to the said chart "depicts the Ecuador-Peru maritime boundary [gráfica el límite marítimo Ecuador-Perú]". The Chart cites the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone, while depicting 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 Ecuador-Peru land boundary until the outer limit of Ecuador's 200M.

22 Note (GAB) N°7-9-YY/01 to the Secretary General of the United Nations, dated 2 May 2011. Unpublished. Archives of the Division for Ocean Affairs and the Law of the Sea, United Nations.

23 Agreement by exchange of notes of identical content between the Republic of Peru and the Republic of Ecuador of 2 May 2011. 2756 UNTS No.48631.

27. Again, the parties to the exchange of notes—which eventually was to be registered with the United Nations—treated it differently. For Peru, it was a formal treaty to be approved in Congress, and for Ecuador, a simple executive agreement based on previous treaties to make the maritime boundary more precise and to settle the issue of the base-lines. The Court did not enter into discussions about these issues, avoiding to passing judgment as to the effect of Ecuador’s conduct in the case.

28. On other matters, Chile, as the party that had to provide affirmative elements to counter the denial of the existence of an agreement on delimitation, did not omit references to the legal literature²⁴ and even publications by the United Nations,²⁵ among other academic or official sources, to show the public acknowledgment of the existence of a boundary. Eventually, it would also mention that the parallel as the existing limit in the South East Pacific in cases before the International Court of Justice,²⁶ although non-binding as a direct source of the delimitation in the current case, did not indicated variations as to the existence of a full maritime boundary in place between Chile and Peru. Even agreements signed between Ecuador and Colombia and between Colombia and Panama, in a certain portion of the full line, had been scrutinized as supportive of the existence of a delimitation agreement.²⁷

III. Interpretation, history and evidence: the Court’s choices

29. The decision of the Court in 2014 follows a literal interpretation, thus giving a narrow delimiting effect to the articles of the 1952 Declaration of Santiago, and ignoring the problems that a limited effect of the said provisions underscore. Among others, the unsettled situation of the remaining area abutting the maritime zone of the neighboring country, and the rationale behind the text that depicts a line related to the point at which the land boundary reaches the sea, as Article VI says, whichever the distance of said point from the targeted islands [which in the terms

24 R. R. Bundy, “State Practice in Maritime Delimitation”, in G. Blake (ed.), *5 World Boundaries: Maritime Boundaries* (1994), 31. D.M. Johnston, *The Theory and History of Ocean Boundary-Making* (1988), 214. Johnston asserted that the tripartite boundary provisions adopted by Chile, Ecuador and Peru in 1952 and 1954, was one of those on delimitation adopted before 1958, and that the Santiago Declaration has been one of the six delimitation treaties concluded between 1942 and 1964.

25 United Nations, Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea, *Handbook on the Delimitation of Maritime Boundaries* (2000).

26 See *North Sea Continental Shelf (Federal Republic of Germany/Denmark)*, Reply submitted by the Government of the Federal Republic of Germany on 31 May 1968, Annex, “International and inter-state Agreements concerning the Delimitation of Continental Shelves and Territorial Waters”, Chile-Peru-Ecuador, ICJ Pleadings, Vol. I, 437–438.

27 S.P. Jagota lists these agreements, as pre-existing the United Nations Convention on the Law of the Sea. See Jagota, *Maritime Boundary* (1985), 102.

of the Court would be the only features subject to delimitation], as the Declaration of Santiago did.²⁸

30. Nevertheless, the conclusions of the Court show that judges of the majority sought to manage this possible contradiction. It is said in the decision that “What is important in the Court’s view, however, is that the arrangements proceed on the basis that a maritime boundary extending along the parallel beyond 12 nautical miles already exists. Along with the 1954 Special Maritime Frontier Zone Agreement, the arrangements acknowledged that fact.”²⁹

31. Narrowing further the scope of what had been agreed by the parties and striking a distinct point about the existence of a maritime delimitation, Judge Sepúlveda³⁰ was the one to allude to the historical context in which the 1954 Agreement was adopted, “when the concept of a 12-nautical-mile territorial sea entitlement had not attained general recognition and the very notion of an exclusive economic zone as later defined by the 1982 United Nations Convention on the Law of the Sea was foreign to international law”. This argument twists the focus from the existence of a delimitation emerging jointly with the process of creation of extended maritime zones, to a more complex idea, which is the alleged lack of ground for the process of creation of new maritime zones. This approach puts the burden of proof on the recognition or non-recognition status of said zones, not on the merits of the zone itself as seen by its authors, sovereign states and a widespread doctrine in Latin America.

32. On its turn, the joint dissenting opinion of judges Xue, Ghandari, Gaja and judge *ad hoc* Orrego,³¹ would say that:

Moreover, given that the parties publicly proclaimed that they each possessed exclusive sovereignty and jurisdiction over the sea along the continental coasts of their respective countries to a minimum distance of 200 nautical miles from their coasts, and that they provided explicitly in the Santiago Declaration that

28 “The process of interpretation, rightly conceived, cannot be regarded as a mere mechanical one of drawing inevitable meanings from the words in a text, or of searching for and discovering some preexisting specific intention of the parties with respect to every situation arising under a treaty [...] In most instances interpretation involves giving a meaning to a text not just any meaning which appeals to the interpreter, to be sure, but a meaning which, in the light of the text under consideration and of all the concomitant circumstances of the particular case at hand, appears in his considered judgment to be one which is logical, reasonable, and most likely to accord with and to effectuate the larger general purpose which the parties desired the treaty to serve”. Sir Humphrey Waldock, Special Rapporteur of the International Law Commission, 2 ILCYB (1964), 53. He cites Part III of the Harvard Law School, Research in International Law, Law of Treaties, 946.

29 Para. 99.

30 <http://www.icj-cij.org/docket/files/137/17940.pdf>.

31 <http://www.icj-cij.org/docket/files/137/17946.pdf>.

the islands off their coasts should be entitled to 200-nautical-mile maritime zones, it is unpersuasive to draw the conclusion that they could have reached a tacit agreement that their maritime boundary from the coast would only run for 80 nautical miles, which is clearly contrary to their position as stated in the Santiago Declaration.

In fact, none of the parties denied the evolution of the Law of the Sea; on the contrary, both highlighted the struggle to obtain support for the 200-nautical miles doctrine covering both, water column and the continental shelf; on the other hand, what they contended was the delimitation line and the methodology to which assign priority for its establishment, not the validity of the said line at the time of adoption.

33. It is also worth underscoring that Peru contested the scope and status of the arrangements embodied in bilateral documents officially signed in 1968 and 1969 by delegates of the parties, and approved by the respective Governments, to materialize the maritime boundary and build alignment towers to that purpose. For the proceedings, it meant that the theoretical discussion about a treaty of delimitation would be supplemented by a question related to the conduct of the parties based on the assumption of an existing delimitation.

34. In this respect, the Court admitted that the maritime boundary which the Parties intended to signal with the lighthouses' arrangements was the parallel passing through Boundary Marker No. 1. It was noticed by the decision that both Parties implemented the recommendations of the 1969 Act and built the lighthouses as agreed, thus signaling the parallel passing through Boundary Marker No. 1. "The 1968–1969 lighthouse arrangements therefore, serve as compelling evidence that the agreed maritime boundary follows the parallel that passes through Boundary Marker No. 1", says the judgment.³²

35. On historical matters, the contest before the Court was not about the remaining of the XIX century wars, but about the situation of the maritime zones at the aftermath of World War II. In fact, two issues came up in the pleadings in the case:

- Historical issues in the creation of a 200M maritime zone by Chile and Peru, Ecuador joining later, and the evolution of the Law the Sea and its bearing on the proclamations on extended maritime zones. These issues are highlighted by the judgment although they are not specifically singularized by it.
- Equitable delimitation seen from the perspective of the existing agreements, as well as potential consequences of rules governing maritime delimitation and their application in the case.

This is the background against which the ICJ's decision is susceptible of analysis, while providing scarce information about the reasoning behind certain substantive

32 Para. 174.

paragraphs. This is the circumstance of the limited extent of the parallel line to 80 nautical miles and its relationship with the existing 200 nautical miles maritime zone which the line is meant to delimit. Accordingly, there is an interest in examining certain issues raised by the decision which entail crucial points of international law.

36. A first subject matter is the historical underpinning of the creation of a 200M maritime zone by Chile and Peru, to which Ecuador joined in 1952, and its bearing on the delimitation. In the current case, the contentions of the parties could not have been more separate from each other. In fact, while Peru sustained that the initial proclamations of 200M were nothing but a policy oriented doctrine to protect natural resources, Chile contended that the intention of the two States was to establish an extended maritime zone gifted with legal status.

37. In the view of the Court,³³ “According to Chile, the 1952 Santiago Declaration has been a treaty from its inception and was always intended by its signatories to be legally binding. Chile further notes that the United Nations *Treaty Series* indicates that the 1952 Santiago Declaration entered into force upon signature on 18 August 1952, with there being no record of any objection by Peru to such indication”.

38. The Court also noted³⁴ that Peru considered that the 1952 Santiago Declaration was not conceived as a treaty, but rather as a proclamation of the international maritime policy of the three States. Peru claimed that it was thus “declarative” in character, but accepted “that it later acquired the status of a treaty after being ratified by each signatory (Chile in 1954, Ecuador and Peru in 1955) and registered as such with the United Nations Secretariat on 12 May 1976, pursuant to Article 102, paragraph 1, of the Charter of the United Nations”. Actually, the Court affirmed that it was no longer contested that the Declaration had a treaty character.³⁵

39. Whether the maritime zones proclaimed in 1947 and referred to in the treaties of 1952 and further agreements were in accordance with international law, a matter that was much discussed by maritime powers in the late 1940s and early 1950s, was not the real issue in this case.³⁶ The central issue was that Chile and Peru, together with Ecuador, did establish a valid maritime zone among them and fought for its international recognition, both at the regional and at the world level. This was reflected in their respective legislations and invoked before third powers.

40. The question at stake had also to do with the validity of the assertion made by Ambassador Bakula of Peru in 1986, about 40 years after the beginning of the

33 Para. 46.

34 Para. 47.

35 Para. 48.

36 As early as in 1952, the Interamerican Juridical Committee had acknowledged that Chile and Peru had proclaimed national sovereignty over the seas adjacent to its coasts. Statement of Reasons accompanying the Draft Convention on Territorial Waters and Related Questions, 30 July 1952, 5–6.

process, submitted in writing as a memorandum presented to the Ministry of Foreign Affairs of Chile, as part of a personal *démarche*. In his views:

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

The Ambassador’s memorandum admitted that the maritime zone extended up to 200–nautical miles while postulating that it was something different from the one that had been agreed by the Third United Nations Conference on the Law of the Sea. It also postulated that the documents adopted by the parties did not address the delimitation of the zones. Bakula preached for an express and formal delimitation with Chile, a definitive one.

41. Accordingly, had the maritime boundary as existed at the time been harmed or weakened by the emergence of the maritime spaces as shaped in the process of the Third United Nations Conference on the Law of the Sea? This is something that the Court’s judgment does not address, but it leaves room for questioning whether or not views of the majority were inclined to see the Bakula’s episode as validly introducing doubts about the topics raised therein. It may have appeared to the Court that Chile did not take a clear stand towards differentiating between the political response dictated by the circumstances and the juridical content of Bakula’s words.

42. The question raised by Judge Bennouna at the end of the first round of the oral hearings focused on a different point, as he raised the question of the validity of the proclamations and related delimitations rather than on the issue of the continuity in time of the maritime zone proclaimed in 1947–1952 in the light of developments that took place some years later.³⁷ While Peru stressed the point of a *lege ferenda* phenomenon arising from the 1947–1952 instruments, Chile approached the subject as having a

37 “Do you consider that, as signatories of the Santiago Declaration in 1952, you could at that date, in conformity with general international law, proclaim and delimit a maritime zone of sovereignty and exclusive jurisdiction over the sea that washes upon the coasts of your respective countries up to a minimum distance of 200 miles from those coasts?” Answers by the two States could not be more different. Professor Tullio Treves speaking for Peru, stated that “Chile, Peru and Ecuador could make such a ‘proclamation’, but it would not have been in conformity with general international law at that time and, for the same reason, would not have been opposable to third States. Clearly, their claims were *de lege ferenda*. What the three signatories had in mind was to have the law in force at the time changed”. Hearings of 11 December 2012.

Taking a different view, Professor Dupuy, speaking for Chile replied that:

regional effect and struggling to reach global support which it finally obtained. Again, the context of the approval of the Santiago Declaration shed light when Ecuador's clarifying statement at the end of the conference, refers to the "the dividing line of the jurisdictional waters" as the parallel identified in the Santiago Declaration. The Joint Dissenting Opinion sustains that this may be taken as a further confirmation that the maritime boundary would run up to 200 nautical miles along that parallel.³⁸

43. This leads to the point about the relationship between the evolution of the Law of the Sea and the proclamations of extended maritime zones already in place. This issue is certainly another aspect of the same coin. That is, did the law of the sea emerging from the major transformations of the 1960s and 1970s as globally accepted, produce a change in the legality of existing agreements which had already been adopted some years before and that the parties considered as still in force?

44. While Peru invoked geography and Chile focused on the law of treaties, the discussion on delimitation was not centered on the role of *effectivités* and possession of the maritime area. This contrasts with the decision to take a stand for attributing importance to activities conducted during certain amount of time in the maritime zone. It is not the classic formula applied in territorial cases around "title v *effectivités*" factors,³⁹ but a more practical intellectual exercise. In this respect, how much Chile's control over the maritime area at the time of the adoption of the Declaration of Santiago and the 1954 Agreement, attracted the attention of the doctrine and of third States? The answer to this question appears closely related to the historical origin of the 200-nautical miles and its relationship with the emerging Law of the Sea in the context of the Third

10. Being aware that this was the state of the law, the three States therefore had recourse to an agreement, the one constituted by the Declaration but also by the agreements which accompanied it, in 1952, and followed it, in 1954. The Declaration solemnly proclaimed the objective of protecting natural resources and assigned each party its own area of jurisdiction, on the basis of the preliminary delimitations already asserted by Chile and Peru in 1947, and in keeping with the regional tradition of relying on geographic parallels.

11. Given the constraints on the international positive law of the time, which stood in opposition to the protective and forward-looking aims of the three States concerned, it is necessary to draw a distinction between two aspects of the effect of the treaties which were concluded in Santiago in 1952 and then in Lima in 1954.

12. *Inter se, inter partes*, as Professor Condorelli said in one of his pleadings, that is to say between the parties, these treaties, beginning with the Declaration, are quite clearly a source of mutual obligations, whose régime is governed by the *pacta sunt servanda* principle.

13. With regard to third parties, however, the question arises as to whether they are enforceable, despite the fact that they can in principle be categorized as so-called objective treaties since they fix territorial - albeit maritime - boundaries.

Hearings of 14 December 2014.

38 Para. 23.

39 M. Kohen, *La relation titres/effectivités dans la jurisprudence récente de la Cour Internationale de Justice (2004–2012)*, *Unité et diversité du droit international. Ecrits en l'honneur du Professeur Pierre-Marie Dupuy* (édité par Denis Alland, et al., 2014), 599–614.

United Nations Conference. The influential Latin American doctrine never raised this point as a controversial one, but rather as a matter for harmonization.⁴⁰

45. The ICJ's decision quotes a declaration made by Chile, Peru, Ecuador and Colombia⁴¹ in 1982, in the context of the final stage of the Third United Nations Conference on the Law of the Sea, recalling "the universal recognition of the rights of sovereignty and jurisdiction of the coastal State within the 200-mile limit provided for in the draft Convention is a fundamental achievement of the countries members of the Permanent Commission of the South Pacific, in accordance with its basic objectives stated in the Santiago Declaration of 1952".

46. This declaration still provides a logical answer to the question as to the legal continuity of the maritime zone at the time of conclusion of the Third Conference in 1982.⁴² How could it be possible that State parties acknowledge that the Santiago Declaration of 1952 had objectives based on the existence of rights of sovereignty and jurisdiction, praising that the outcome of said Conference was driven by the same principles, without conceding that its validity was not in jeopardy because of the imminent adoption of the United Nations Convention on the Law of the Sea?

47. Another element to be highlighted from the ICJ's decision is that, while it refers to the differentiated maritime spaces emerging from the new Law of the Sea, that is, the distinction between a territorial sea, an exclusive economic zone and the continental shelf, the consequences of said nomenclature do not seem to have had an important bearing on the delimitation. Nevertheless, the Court does seem to have paid some attention to the approaches that the parties had towards the status of the 200-nautical miles as a single maritime space or as a space composed of distinct zones. The maritime dominion as set out in Peru's Constitution was one of the elements in this equation.⁴³

40 Hugo Caminos, *Harmonization of pre-existing 200-mile claims in the Latin American region with the United Nations Convention on the Law of the Sea and its exclusive economic zone*, *Inter American LR* (1998–1999), 9–30; Francisco García-Amador, *The Latin American Contribution to Development of the Law of the Sea*, 68 *American JIL* (1972), 33; Andrés Aguilar Mawdsley, *The Latin American Contribution to the Modern Law of the Sea*, 39 *Netherlands ILR* (1992), 63.

41 Letter of 28 April 1982 from the representatives of Chile, Colombia, Ecuador and Peru to the President of the Conference, translated by the United Nations, document A/CONF.62/L.143.

42 References to correlates between the regional and global process may be found in F. Orrego Vicuña (ed.), *The Exclusive Economic Zone: A Latin American Perspective* (1984).

43 The 1993 Peruvian Constitution, in its Title II, *The State and the Nation*, Chapter I, *The State, the Nation and the Territory*, reads, in Art. 54:

The territory of the Republic is inviolable. It includes the soil, the subsoil, the maritime dominion and the superjacent airspace.

The maritime dominion of the State includes the sea adjacent to its coasts, as well as the bed and subsoil thereof, up to the distance of two hundred nautical miles measured from the baselines determined by the law. In its maritime dominion, Peru exercises sovereignty and

The Court's approach supports the thesis of a single maritime boundary, from the coast till reaching the high seas.

48. Paragraph 178 of the Judgment is indicative of this understanding. There the Court says:

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

This assertion, like others related to the status of the United Nations Convention of the Law of the Sea in this case, seems to aim at strengthening the creation of connectors between the parties at the aftermath of the decision of the Court, giving place to questions as to the terms and conditions of the execution of the judgment.

49. Together with the above referred focus, the Court's judgment poses a question that goes to the heart of the discussion embedded in this case. That is, whether the delimitation in application between Chile and Peru was revisable in the light of the concept of an equitable solution. Or, as reflected in the dispositive of the decision, the extent of 80M of the parallel of Hito No.1, followed by an equidistance line drawn south-westwards from a point at 80M from the low water line on the said parallel, was a result of a composed formula made up of nature, law and occupation of the seas.

50. This issue contrasts with the Court's acceptance of the point made by Chile in the sense that the maritime limit based on the parallel line was an all-purpose one, that is, that whichever the extent of the parallel, it separated the whole set of rights and jurisdictions, including sovereign ones, appertaining to the maritime spaces in force.

51. The Court's breaking of the parallel at the end of 80M from the base point is followed by an assertion mentioning the introduction of provisions contained in Articles 74, paragraph 1, and 83, paragraph 1, of the United Nations Convention on the Law of the Sea, "which, as the Court has recognized, reflect customary international law".⁴⁴ Then, the judgment quotes in a self-serving argument, the decisions rendered

jurisdiction, without prejudice to the freedoms of international communication, in accordance with the law and the treaties ratified by the State.

The State exercises sovereignty and jurisdiction on the airspace over its territory and its adjacent sea up to the limit of two hundred miles, without prejudice to the freedoms of international communication, in conformity with the law and the treaties ratified by the State.

44 Para. 179.

in the *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, *Merits, Judgment, I.C.J. Reports 2001*, 91, para. 167, and in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Judgment, I.C.J. Reports 2012 (II)*, 674, para. 139). The Court highlights that the texts of those provisions are identical, the only difference being that Article 74 refers to the exclusive economic zone and Article 83 to the continental shelf.

52. The Court decided by majority that an already respected parallel and accepted by Peru was effective for the first 80 nautical miles from the base point located on the low-water line of the latitude of Boundary-Marker No. 1. In practical terms, the Court rejected the pretension that there had to be a different base point to draw the maritime boundary separate from said latitude. Subsequently, the ICJ decided a new equidistant boundary to the south-west, and for doing so, the Court established different parameters to measure the relevant area. In this process, the Court restrained the area which Peru presented as the relevant for delimitation from 164,925 km² to 80,092 km², redrawing the area of interest.

53. On the starting point of the maritime boundary, which for Peru was bound to be located at latitude 18°21'08"S (point 266 in its domestic legislation), the Court concluded that the exact coordinates of the said point were to be determined by the parties on the parallel of Boundary Marker No. 1, thus on 18°21'00"S, as Chile advanced. The Court's judgment also asserts that it was not called upon to take a position as to the location of Point Concordia which the 1929 Treaty between Chile and Peru enunciated as the point at which the land frontier between the Parties starts should start.⁴⁵ As the written pleadings and oral hearings show, this proved to be a point of legal friction between the parties, which in the end did not affect the decision on the maritime boundary.

IV. Practice and treaties: an uneasy equation

54. One outcome of this decision is that Peru has been able to extend its waters in areas that were subject to the exclusive economic zone of Chile or to the high seas regime. A first reading of the decision brings to our minds the question of treaty interpretation and the wide range of possible answers that a tribunal can give, while testing its power to say what the law is. The interpretation of the will of the parties: shall it be more regulated or not? There will be lessons to draw from this case, but the power of the tribunals will remain as it stands.

55. Another point to highlight is the relationship that the judgment establishes between the document that became to be known as the "1986 Bakula memorandum" (so known after the Peruvian diplomat) and the effect and validity of the practice. The ICJ decision poses the question as to the relevance of the State practice to test the

45 Para. 175.

effectiveness of an existing delimitation line. This was in fact one of the core issues brought forward by the Bakula memorandum of 1986 consisting of the invitation to revise the prevailing situation, which for the author was not a definitive one. Despite its limited character it was considered by the Court as reducing “in a major way the significance of the practice of the Parties after that date”.⁴⁶

56. Thence, the decision raises the question of the evidence needed to prove the existence of an agreement to which one party attaches legal force while the other party has been in compliance with it for decades. Although the Court has had to deal with the theory of tacit agreements, this time the problem was not about a non-written agreement, but about the interpretation of existing agreements where the word “frontera” was explicit and the practice of the two parties was publicly available.

57. The temporal issue, although not clearly raised as an inter-temporal one,⁴⁷ is well reflected on the situation of the Agreement relating to a Special Maritime Frontier Zone, of 1954. Historically, it was not an isolated instrument, although it became famous due to its direct connection with the theory of exclusive areas of sovereignty and jurisdiction for each coastal participant State. In this respect, the Court considered that “79. [...] at this early stage there were at least in practice distinct maritime zones in which each of the three States might, in terms of the 1952 Santiago Declaration, take action as indeed was exemplified by the action taken by Peru against the Onassis whaling fleet shortly before the Lima Conference”. On the matter of boundaries of the zones, as the Court observes, the 1954 Special Maritime Frontier Zone Agreement was then to be considered at the forefront.⁴⁸

58. Thence, the Court sees the opportunity to grasp the delimiting agreement as follows: “1. A special zone is hereby established, at a distance of [‘a partir de’] 12 nautical miles from the coast, extending to a breadth of 10 nautical miles on either side of the parallel which constitutes the maritime boundary [‘el límite marítimo’] between the two countries”. Accordingly, the Court accepts that, “On that issue, the terms of the 1954 Special Maritime Frontier Zone Agreement, especially Article 1, read with the preamble paragraphs, were clear. They acknowledge in a binding international agreement that a maritime boundary already exists.” On the other hand, the sentence

46 Para. 142.

47 This dimension appears whenever a rule refers to a notion whose scope or meaning has changed over time. The Intertemporal Problem in Public International Law, Institute of International Law, Session of Wiesbaden, 1975 (http://www.idi-iiil.org/idiE/resolutionsE/1975_wies_01_en.pdf).

48 This characteristic was well appreciated by Frida M. Pflirter de Armas in a study devoted to Peru’s maritime policies. Pflirter mentions both the Declaration of Santiago of 1952 and the 1954 Agreement as sources of the lateral delimitation of Peru with Ecuador and Chile. See Frida M. Pflirter de Armas, *Perú: la marcha al oeste*, in Ralph Zacklin (ed.), *El Derecho del Mar en Evolución: La Contribución de los Países Americanos* (1975), 303.

of the 1954 Agreement where it is said that the said instrument is “to be an integral and supplementary part of” the 1952 Santiago Declaration, will remain a phrase that could have shed light for interpretative goals, but the judgment opted for a different approach.

59. The parties did not see any difference in this context between the expression “límite marítimo” in Article 1 and the expression “frontera marítima” in the Preamble, nor does the Court.⁴⁹ Moreover, it is of significance that the Court opines that “[i]n the view of the Court, there is nothing at all in the terms of the 1954 Special Maritime Frontier Zone Agreement which would limit it only to the Ecuador-Peru maritime boundary”.⁵⁰ On this, the judgment does not follow what a member of the Court called a perception or confusion of the negotiators of the 1954 Agreement as to “exactly what had been ‘declared in Santiago’ in 1952”,⁵¹ so as to mark a distinction between what could have been a mere practice and a gradual development of an implicit line based on the practice of the concerned states.

60. This decision will be a classic legal puzzle as to the definition of a “tacit agreement” versus a cemented expression of a boundary as contained in the 1954 Agreement on a Special Maritime Zone. And the Declaration by Judge Skotnikov brings an important reference to this point:

[...] the Court could have dealt with this in the same manner that it resolved the issue of whether the maritime boundary is all-purpose in nature, namely, “that [t]he tacit agreement, acknowledged in the 1954 Agreement, must be understood in the context of the 1947 Proclamations and the 1952 Santiago Declaration” (Judgment, paragraph 102). Regrettably, the issue of the extent of the maritime boundary is considered by the Court outside this context.

The extension of the parallel, based on assumptions as to the area of fisheries and enforcement activities in earlier periods after the 1952–1954 treaties, is poorly supported by the evidence submitted before the Court. It did not consider—following the time limit posed by the Bakula memorandum—the fact that none of the enforcement measures adopted by Chile had been followed by protests on the part of Peru. Reservations as to the existence of an agreed boundary were only made since 2004.

61. The fact that the majority of the Court agreed with the application of the current formulae to measure the maritime zone by arc-of-circles does not fully respond to the questions raised by the judgment regarding the correct interpretation of the parallel of latitude as indicated in the Declaration of Santiago in 1952. In this respect, the case that Peru never argued at that time about a potential or actual overlap with Chile due to the projection of its coast by means of the method of arcs-of-circles, may not have been

49 Para. 90.

50 Para. 85.

51 Separate opinión of Judge Owada, para. 17.

unnoticed in The Hague. This element—raised by the joint Dissenting Opinion⁵²—was not taken into consideration by the opinion of the majority.

62. In the end, after Chile and Peru expressly declared its commitment to comply with the decision, the analysis of its various paragraphs and those of the Declarations and Opinions may be just an academic exercise.

63. Nonetheless, the aftermath shows that complying with an international judgment meant not only diplomatic exchanges but also highly substantive legal and technical issues, comprising technical aspects such as coordinates, basepoints, baselines, adaptation of domestic norms, etc. Although not related to the limit itself, whether the law of the sea will be a framework for cooperation or an arena to disagree, remains in the hands of the Parties.

V. Conclusions

64. In the 27 January 2014 decision, the International Court of Justice opened a wide range of questions about the operation of international law in judicial settings when dealing with the evolution of norms in a global ambit while the practice of the States had already been developed at a different pace on the regional stage. Legally speaking, the case was about treaties, the law of the sea, methods of maritime delimitation and the value of agreements and practice, but for other analysts it was most and foremost about relationships between diplomacy and law whereas the *status quo* favored Chile.⁵³

65. Seen from a foreign policy perspective, the question for Chile was either to accept a controversy whose scope will necessarily affect essential issues of the bilateral relations with Peru or, to confine the claim to an area where contests could be assessed according to their own merits and international law could provide a common ground for agreement. The decision to contest Peru's argument according to international law was then an alternative aimed to extracting Chile's responses and counterarguments from the formal diplomatic sphere.

66. On its part, Peru's Memorial picked up some particulars of the history of the bilateral relations, conveying the message of a conflictive relationship spotted with uneven good neighbor practices. Alien to the question of the maritime boundary, the execution of the 1929 Treaty that put an end to the question of sovereignty over Tacna and Arica was introduced according to that perspective.

67. The law of the sea was seen as a means to repair wounds of the past, Chile may have understood. Thus, its reading of the bilateral history was given by the Agent of

52 Para. 14. The joint dissenting opinion was authored by Judges Xue, Gaja, Bhandari and Judge ad hoc Orrego Vicuña.

53 <http://www.economist.com/news/americas/21595481-heres-grown-up-way-settle-long-standing-border-dispute-line-sea>.

Chile in his opening speech at the public sitting of 6 December 2014.⁵⁴ Consequently, it was apparent since the beginning that the narrative of each State would differ on various accounts. For Chile, to reopen what had been agreed was not reasonable and history should not be brought into consideration.

68. From 2000 to 2014, several years lapsed with allegations about how to define the disagreement and how the two countries could find common ground on the maritime delimitation and the surrounding elements.

69. In the aftermath of the ICJ judgment, the questions of implementation and execution of the decision were on the front page of the two States. Rather soon, the technical aspects of the determination of the coordinates of points of the delimitation line (A, B, C, D) were subject to the joint work of a mixed committee, whose work concluded on 25 March 2014.⁵⁵ The Minutes remain to be transmitted to the United Nations to make it publicly available. On the other hand, the judgment has made apparent the need to adapt the domestic legislation which is not in conformity with the United Nations Convention on the Law of the Sea, where the use of the term “maritime dominion” or “domain” is outstanding. Changes and derogations of existing pieces of legislation and maps, especially those alluding to an area in controversy may also be part of this endeavor.

70. The judgment recalls the strength and place of the methodology of the three stages in delimitation controversies in search of an equitable solution, as enunciated by the Court in earlier cases⁵⁶ and referred to earlier in this study. This methodology—according to the Court—had to apply at the endpoint of the 80M parallel line to draw an equidistance line.

71. The Court itself acknowledges that this is an unusual situation. The resulting line will again have to be tested in accordance with the “circular” character of the equitable principles test, as authors have noticed.⁵⁷

54 He said “Chile and Peru have lived together in peace for 130 years. We have worked together on innumerable occasions to further economic integration and development and to improve the lives of our peoples. Chile conducts its relations with Peru based on principles of good faith, mutual respect and observance of international agreements” (<http://www.icj-cij.org/docket/files/137/17210.pdf>).

55 <http://www.minrel.gob.cl/peru-y-chile-suscriben-acta-de-trabajos-conjuntos-para-delimitacion-de-frontera-maritima/minrel/2014-03-26/113238.html>.

56 Cases referred in this respect are the Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, ICJ Reports 2009, 101–103, paras. 115–122; and Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, ICJ Reports 2012 (II), 695–696, paras. 190–193.

57 Gillian Triggs, *International Law, Contemporary Principles and Practices* (2011), 375–376.