Maritime Dispute (Peru v Chile)

The Boundary Agreement

James Crawford SC

OUTLINE

1. INTRODUCTION

Mr President, Members of the Court

It is an honour to appear before you on behalf of the Republic of Chile.

1.1 Peru instituted these proceedings to ask you to delimit its maritime boundary with Chile. But there is a problem with that request, for Peru and Chile already have a maritime boundary. They delimited it by agreement in the Santiago Declaration of 1952 and on various subsequent occasions they jointly acknowledged that they had done so.

1.2 As we have seen, Peru's case that the Santiago Declaration of 1952 is not a treaty at all has largely fallen by the wayside, and all the emphasis this week has been placed on its second line of attack – that the Santiago Declaration did not determine a

boundary. As Professor Lowe put it on Tuesday, "Nothing in the Declaration refers to maritime boundaries".[1] Nothing, nothing, nothing. Insofar as anyone from Peru's team could steel themselves to refer to the 1954 Agreement Relating to a Special *Maritime Frontier* Zone, the title of which does rather speak for itself, this was to downgrade it to "a practical arrangement, of a technical nature, and of limited geographical scope".[2] It is true, it was limited, limited to the *frontier zone*. But according to Peru there is no frontier zone because there is no frontier. So much for the title and content of treaties!

1.3 I note in passing that, in its written pleadings, Peru also has a third line of argument, which is to say that if there was an agreed delimitation in 1952, that agreement concerned Peru and Ecuador only. We have heard no more on that, and as I take you to the key agreements, you will readily see why.

1.4 The simple point that I will be making is that there was indeed an agreement on delimitation in the 1952 Declaration, and that agreement falls to be respected, as the parties intended at the time, and as today follows both as a matter of customary international law, as you noted in *Nicaragua/Colombia*,[3] and also pursuant to the 1982 Convention on the Law of the Sea.

1.5 I am afraid that this is going to be a plodding, mechanical sort of exercise, going through the treaties and minutes in a chronological fashion, if fashion is the right word for this sort of lawyering. I can only apologise for my pedantry and try and help you through the documentation in an orderly way. In the binder before you, you will see that we have included the core texts, which I will be taking you to consecutively -- unlike Peru we do not read history backwards. I have deliberately

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1 CR 2012/28, p. 23, para. 53 (Lowe).

2 CR 2012/28, p. 29, para. 11 (Wood).

3 *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, paras 137-139.

asked for complete translations of key documents to be before you, as this is a case that will turn on the careful study of a relatively small core of documents, and as to which the Court is not going to be greatly assisted by a series of short extracts being flashed up, flashily, on the screens before you.

2. THE 1947 PROCLAMATIONS

2.1 I start by way of important background with the unilateral Proclamations issued in 1947 by each of Chile and Peru.

2.2 The first of these two Proclamations was issued in June 1947 by the President of Chile. The second was issued a month later, jointly by the President and Foreign Minister of Peru. Each state's proclamation declared that state's "sovereignty" over the sea and the continental shelf within 200 nautical miles of that state's coast.

2.3 Chile's 1947 Proclamation is at **Tab 1** of your binders. I will be referring to the page numbers in bold at the foot of each page, which have been superimposed over the originals.

2.4 You will see that in the highlighted text on page 6 Chile "proclaims its national sovereignty over all the continental shelf".[4] In Article 2 Chile "proclaims its national sovereignty over the seas adjacent to its coasts".[5]

2.5 Chile reserved the right to alter in the future the area over which this proclamation was to have effect. In Article 3, Chile declared its maritime zone to be established "immediately over all the seas contained within the perimeter formed by the coast and the mathematical parallel projected into the sea at a distance of 200 nautical

[4] PM, Vol. II, **Annex 27**, p. 136, Art. 1.

[5] PM, Vol. II, **Annex 27**, p. 136, Art. 2.

miles from the coasts of Chilean territory".[6] It is clear from the context that "mathematical parallel" was another way of saying *tracé parallèle*, and that Chile conceived its maritime zone as having a "perimeter", as befits a zone of sovereignty.

2.6 On Monday Sir Michael Wood wished to explore the domestic legal status of Chile's 1947 Presidential Declaration.[7] There is no need to spend time on that point because all that matters is that it was an international claim, with immediate international effect and was understood internationally as such. Chile's Ambassador in Lima accordingly informed Peru's Foreign Minister, Dr García Sayán, of Chile's Declaration.[8]

2.7 Peru issued its own unilateral proclamation just one week later, and also acknowledged receipt of Chile's Declaration.[9]

2.8 At **Tab 2** of your binders, you find Peru's 1947 Supreme Decree. As Chile had just done, in Article 1 Peru declared "national sovereignty and jurisdiction"[10] over the continental shelf. In Article 2 Peru proclaimed that: "National sovereignty and jurisdiction are exercised as well over the sea adjoining the shores of national territory".[11] Again following Chile, in Article 3 Peru indicated that the limits of its claim could be changed in the future. At the same time, Peru actually claimed — and you will see this highlighted at the top of page 5 — "the area covered between the coast and an imaginary parallel line to it at a distance of two hundred (200) nautical miles

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6 PM, Vol. II, **Annex 27**, p. 136, Art. 3.

7 CR 2012/27, p. 62, para. 16 (Wood).

8 CCM, Vol. III, **Annex 52**.

9 CCM, Vol. III, **Annex 54**.

10 PM, Vol. II, **Annex 6**, p. 26, Art. 1.

11 PM, Vol. II **Annex 6**, p. 26, Art. 2.

measured following the line of the geographic parallels".[12] Those last eight words are particularly relevant: "measured following the line of the geographic parallels".

2.9 Peru's declared method of projection determined both the outer limit and the lateral limits of its maritime zone. The Parties agree about how this method of projection worked. Peru's Memorial explains that "at each point on the coast a line 200-mile[s] long would be drawn seaward along the geographical line of latitude, so that there would be a 'mirror' coastline parallel to the real coastline — the real coastline would in effect be transposed 200 miles offshore and form the outer edge of the 200-mile zone".[13]

2.10 Peru's Supreme Decree declared sovereignty over the area "*covered between*" the coast and an imaginary line parallel to it. Peru specified how that imaginary line was projected from the Peruvian coast. Each point on the coast was projected 200 nautical miles to sea along the geographic parallel on which it lay.

2.11 Obviously the southernmost point on Peru's coastline is the point at which its land boundary with Chile reaches the sea. Peru's 1947 Supreme Decree used a method of projection by which the parallel of latitude passing through that point and running out 200 nautical miles to sea constituted the southern limit of Peru's maritime projection.

2.12 As you see at its conclusion, Peru's 1947 Supreme Decree was issued by its President Bustamante y Rivero, a man who needs no introduction before a Court over which he once presided, and by its Foreign Minister García Sayán. Just a week

[12] PM, Vol. II **Annex 6**, p. 27, Art. 3.

[13] PM, para. 4.58.

earlier the latter had received notification of the equivalent proclamation issued by the President of Chile.

2.13 With this clearly identified method of projection — "measured following the line of the geographic parallels" — Peru's Ambassador to Chile delivered Peru's 1947 Supreme Decree to the Chilean Minister of Foreign Affairs under cover of a diplomatic note of 8 October 1947.[14] By note of 3 December 1947 Chile acknowledged receipt.[15]

2.14 Just as Peru had made no objection to Chile's 1947 Presidential Proclamation, Chile made no objection to Peru's method of projection or any other aspect of its Decree.

2.15 On Monday Sir Michael raised the question of whether the unilateral proclamations of Chile and Peru created international *obligations*.[16] That question is beside the point. They are relevant because they were international *claims*.

2.16 The method of maritime projection used by the two states in 1947 created a situation in which the maritime zones of Chile and Peru abutted perfectly. There was no overlap between them. The line at which they abutted was the parallel of latitude of the point where their land boundary reached the sea. You can see this now on your screens.

(a) In this first frame you see the Peruvian coast accompanied by the northernmost and southernmost parallels of latitude that pass through it. Between them are the parallels of latitude at five degrees, ten degrees and fifteen degrees South.

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14 CCM, Vol. III, **Annex 53**.

15 CCM, Vol. III, **Annex 55**.

16 CR 2012/27, pp. 59-60, para. 11 (Wood).

(b) In this next frame each point on the Peruvian coast is marked, and of course that results in the solid blue line along the Peruvian coastline.

(c) This is how the *tracé parallèle* constituting the outer limit of Peru's maritime zone was created. Every point on the coastline was projected 200 nautical miles to sea along the parallel of latitude that passed through it. This outer limit is the "imaginary parallel line" specified in Article 3 of Peru's 1947 Supreme Decree.

(d) The next frame shows that the method of projection used to create the outer limit of Peru's maritime zone also created the northern and southern lateral limits of that zone. Those are the lines marked in red.

(e) This final frame, at **Tab 40**, adds the *tracé parallèle* of Chile's coast, Chile having also used that method for the outer limit of its maritime zone in Article 3 of its 1947 Presidential Declaration.

2.17 On Monday, Sir Michael stressed that this Peruvian Presidential Decree did not create a maritime boundary.[17] That is correct, but it also misses the point. The method of projection used in Peru's Supreme Decree meant that Peru simply had no maritime claim south of the parallel of latitude of the point where its land boundary reached the sea.

2.18 The unilateral proclamations of 1947 meant that boundary delimitation between Chile and Peru was uncontroversial in 1952. It is not possible to imagine circumstances in which boundary delimitation could be less controversial than where the maritime zones claimed by two adjacent states abut perfectly and do not overlap.

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[17] CR 2012/27, e.g. p. 64, para. 27 (Wood).

2.19 The position was also straightforward at the northern extremity of Peru's maritime zone, where it met Ecuador's. At **Tab 20** you will see a diplomatic memorandum of 1969 from the Government of Argentina asking the Government of Ecuador to inform it of "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".[18]

2.20 At the next tab, **21**, you will see the reply of Ecuador's Ministry of Foreign Affairs to Argentina. This referred to Peru's unilateral proclamation of 1947 as one of the "antecedents" of the boundaries in the region. Ecuador recalled that Peru's proclamation identified an outer limit "following the line of the geographic parallels". Ecuador explained the use of geographic parallels as follows: "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."[19] That is precisely what you have just seen in illustrated form and precisely the same as the explanation given by Peru in its Memorial.[20] Peru, Chile and Ecuador all agreed on how this method worked – and nothing you heard from Peru earlier in the week contradicts this.

2.21 In its response to Argentina, Ecuador indicated that it had "concurred in the adoption of such criterion" in "the conventions of the South Pacific".[21] The conventions of the South Pacific to which Ecuador was referring were the 1952 Santiago Declaration and the 1954 agreements, including the Agreement Relating to a Special Maritime Frontier Zone. Ecuador observed that this method of delimitation

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18 CR, Vol. II, **Annex 21**, p. 113.

19 CR, Vol. II, **Annex 22**, p. 117.

20 PM, para 4.58.

21 CR, Vol. II, **Annex 22**, p. 117.

established, "both the outer maritime limit and the international maritime frontier [as] lines of easy and simple recognition".[22] And yet Professor Lowe says that nothing, nothing in these treaties "refers to maritime boundaries".[23]

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2.22 Peru now contends that the parallel of latitude was used only as a fisheries limit and only close to the shore because it was easy for artisanal fishermen with limited navigational abilities to locate such a simple boundary. But it is obvious that in 1947 the use of parallels of latitude as lines in the sea had nothing to do with itinerant, artisanal fishermen. It concerned sovereignty to 200 nautical miles projected along parallels of latitude.

Mr President, Members of the Court:

2.23 The unilateral claims of sovereignty that Chile and Peru made in 1947 were concordant. Each state communicated its claim to the other. Neither state objected to the other's claim. These unilateral claims of sovereignty were then agreed between the states, and delimited, in the Santiago Declaration of 1952.

3. THE 1952 SANTIAGO DECLARATION

3.1 You will find the Santiago Declaration at **Tab 5**.

3.2 The first relevant provision is Article II, at page 5. In it, Ecuador, Peru and Chile agreed among themselves that they "each possess exclusive sovereignty and jurisdiction over the sea along the coasts of their respective countries to a minimum

[22] CR, Vol. II, **Annex 22**, pp. 117 and 119.

[23] CR 2012/28, p. 23, para. 53 (Lowe).

distance of 200 nautical miles from these coasts".[24] The parties agreed that *each* of them possessed *exclusive* sovereignty over 200 nautical miles of sea adjacent to its coast.

3.3 In Article III, the parties agreed that their "exclusive jurisdiction and sovereignty over this maritime zone shall also encompass exclusive sovereignty and jurisdiction over the seabed and the subsoil thereof".[25] The parties were agreeing between themselves, and asserting against the rest of the world, that each of them had a *comprehensive* as well as "*exclusive*" maritime entitlement.

3.4 The comprehensive character of these maritime claims makes it abundantly clear that Peru's new assertions about the delimitation between the Parties being nothing more than a temporary and informal — even hesitant and provisional — line for limited functional purposes is untrue. They were aware of the magnitude of what they were doing, and they were aware that it would arouse opposition. But that only emphasised the importance of presenting a united front. In Articles II and III of the Santiago Declaration, the parties made plenary claims of sovereignty and jurisdiction to 200 nautical miles from their coasts. And they meant it, as witness Peru's arrests of the Onassis whaling fleet 110 miles offshore in 1954.[26] This was a once in a lifetime opportunity to protect their offshore fisheries and whaleries from a post-War resurgence of powerful distant water fishing interests. And they did it, not by making, à la Trèves, diffident diplomatic démarches but by asserting zones of exclusive sovereignty with *perimeters*.

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[24] PM, Vol. II, **Annex 47**, p. 261, Art. II.

[25] PM, Vol. II, **Annex 47**, p. 261, Art. III.

[26] CR 2012/28, p. 35, para. 38 (Wood); CCM, Vol IV, **Annex 163**, p. 983.

3.5 I should add that Professor Lowe's attempts to play down the importance of the Declaration is not only belied by its objects and by the contemporaneous events, but also by the way the three states themselves saw matters, as witnessed not least by their joint affirmation at the closure of the Third Law of the Sea Conference, to which Professor Treves took you on Tuesday.[27] There, together with Colombia, they stated their wish – and I quote –

> "to point out that the universal recognition of the rights of sovereignty and jurisdiction of the coastal State within the 200-mile limit provided for in the draft Convention is a fundamental achievement of the countries members of the Permanent Commission of the South Pacific, in accordance with the basic objectives stated in the Santiago Declaration of 1952." [28]

And, in a passage that you were not taken to, the affirmation continues to describe how the Permanent Commission of the South Pacific "has the merit of having been the first to denounce the unjust practices existing in the maritime spaces and of having proposed appropriate legal solutions, thereby contributing to the development of the new law of the sea".[29] In Professor Lowe's eyes, the 1952 Conference may have had no more than a "limited, scientific purpose",[30] but that is not how the States that actually participated have seen matters.

3.6 Chile agrees entirely that whales and fish were the most important resources in the maritime area at the time of the Declaration. Fisheries still are vital. But the regulatory authority that the three States exerted over those resources was only

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27 CR 2012/28, p. 47, para. 9 (Treves).

28 PM, Vol. III, **Annex 108**, p. 632.

29 PM, Vol. III, **Annex 108**, p. 632.

30 CR 2012/28, p. 18, para. 32 (Lowe).

one attribute of the sovereignty they claimed in the Declaration, and claimed out to 200 nautical miles.

3.7 Indeed, on Monday, Peru relied on its Petroleum Law promulgated in March 1952 to assert that by the time of the Santiago Declaration Peru was using a different method of maritime projection from the one it used in 1947.[31] David Colson will come back to that Petroleum Law in due course, but for the moment I just want to make the obvious point that, through its Petroleum Law, Peru exercised jurisdiction over all hydrocarbons in its continental shelf to a distance of 200 nautical miles from the coast. And now Peru asks the Court to find that five months later its international maritime claim in the Santiago Declaration was concerned "only" with fish and whales.

3.8 In short, in Articles II and III of the Santiago Declaration, the parties were acting together to give multilateral support to the *comprehensive* maritime claims Peru and Chile had each already made unilaterally in 1947.

3.7. In Article IV of the Declaration, the parties delimited their comprehensive claims of sovereignty and jurisdiction. Of course, you have heard many times this week that this Article is only about islands but, on a correct interpretation, a boundary was agreed in Article IV and this, as you see in the last highlighted passage on page 5 of **Tab 5**, was "the parallel at the point at which the land frontier of the States concerned reaches the sea". In full, Article IV of the Declaration reads as follows:

> "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

[31] CR 2012/27, pp. 65-67, paras 30-34 (Wood).

countries, the maritime zone of the island or group of islands shall be limited [delimited!] by the parallel at the point at which the land frontier of the States concerned reaches the sea."[32]

3.9 Article IV refers to the maritime zone generated by the frontal projection of a state's continental coast as its "general" maritime zone. That is a zone of sovereignty, not a figment of construction lines. It has a perimeter. As we know from the exchange of unilateral proclamations in 1947, there was no overlap between the general maritime zones produced by the frontal projection of the continental coastlines of Chile and Peru.

3.10 In the first sentence of Article IV the three states agreed that all of their islands enjoyed a 200 nautical mile radial projection. That created overlap between the "general" maritime zone resulting from the frontal projection of a state's continental coastline and the radial projection of any island belonging to an adjacent state that lay within 200 nautical miles of that general maritime zone.

3.11 That brings us to the second sentence of Article IV, which requires the parties to be able to determine if an island "is situated less than 200 nautical miles from the general maritime zone belonging to another of those countries".

3.12 Peru's present position — that the general maritime zones of Chile and Peru have never been delimited — would deprive the second sentence of Article IV of any meaning or effect. Professor Lowe acknowledged on Tuesday that Article IV applies to islands "situated less than 200 nautical miles from the general maritime zone belonging to another of those countries".[33] He added that: "If that situation occurs", then

[32] PM, Vol. II, **Annex 47**, Art. IV, p. 261.

[33] CR 2012/28, p. 14, para. 13 (Lowe).

the insular zone shall be limited by the parallel.[34] But if the general zones are not delimited, then it would be impossible to know "if that situation occurs". It would be impossible to know if an island is within 200 nautical miles of the general maritime zone of the neighbouring state.

3.13 Under Peru's interpretation, Article IV could therefore not apply to any island at all, whether Ecuadorean, Peruvian or Chilean. But of course treaty provisions must be given some effect. That is part of the principle of effectiveness you articulated in the *Territorial Dispute* between Libya and Chad.[35] Since the meaning that Peru proposes would deprive the second sentence of Article IV of any effect at all, the principle of effective interpretation precludes it.

3.14 The ordinary meaning of Article IV, interpreted in good faith and by reference to its context, does grant it an effect. It was possible to know if an island was within 200 nautical miles of an adjacent state's general maritime zone, because the general maritime zones of each pair of adjacent states that signed the Santiago Declaration were delimited by — and these are the last words in Article IV of the Santiago Declaration — "the parallel at the point at which the land frontier of the States concerned reaches the sea".

3.15 For any island within 200 nautical miles of that parallel of latitude, how the issue of overlap between the insular maritime zone and the general maritime zone of the adjacent state was resolved is quite simple. The parties agreed on the lateral delimitation of their general maritime zones. This was an agreement easily reached because of the events of 1947. The delimitation of those zones by agreement in 1952

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[34] CR 2012/28, p. 14, para. 13 (Lowe).

[35] *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994,* pp. 23-24, para. 47.

did not depend on the presence of islands. That delimitation followed "the parallel at the point at which the land frontier of the States concerned reaches the sea". These words came last in the text of Article IV, but as a matter of logic the maritime boundary that they created came first.

3.16 If an island was not within 200 nautical miles of the maritime boundary, it would have a full 200 nautical mile radial projection. That is the effect of the first sentence of Article IV. If it was within 200 nautical miles of the maritime boundary, then its radial projection was truncated by that boundary. That is the effect on insular projections of the second sentence of Article IV.

3.17 Insular projections needed special attention, because they created the overlap. But the attention that they received was that they were truncated by the same maritime boundary that was agreed to apply as between the general maritime zones of adjacent states. With the benefit of hindsight no doubt this could have been better formulated. But the intention of the parties is evident, and that is what matters.

3.18 An illustration using actual islands within 200 nautical miles of the Peru-Chile maritime boundary demonstrates how this works.

(a) This first frame is our canvas, showing the maritime boundary.

(b) Isla Blanca is a Peruvian island, not a rock as Professor Lowe teasingly (and anachronistically) likes to portray it;[36] it has a surface area of 15 hectares. It is within 200 nautical miles of Peru's maritime boundary with Chile.

(c) If it had a full 200 nautical mile radial projection, as envisaged in the first sentence of Article IV, its maritime zone would look like this.

[36] CR 2012/28, pp. 21-22, para. 47 (Lowe).

(d) The effect of the second sentence of Article IV of the Santiago Declaration on this insular maritime zone is that it is truncated at the maritime boundary, and so actually looks like this.

(e) The same applies to the Chilean island of Alacrán, which is 8 hectares in area, off the coast of Arica, less than 8 nautical miles from the maritime boundary.

(f) The first sentence of Article IV, unqualified, would give it a radial projection like this.

(g) Obviously penetration into Peru's maritime zone by 192 nautical miles would have been unacceptable. Hence the second sentence of Article IV truncated this zone at the maritime boundary, like this. Alacrán is indeed now joined by causeway to the city of Arica, but there was no causeway in 1952 when the parties signed the Santiago Declaration, nor in 1968 when Peru depicted it as an island on the official Peruvian nautical chart of which you can see an extract in this diagram. The "I" is of course for Isla, there is no "F" for Feature, as Professor Lowe would like us to believe.[37] Peru labelled this *Isla Alacrán*.

3.19 Peru said on Monday,[38] as it has said in its written pleadings, that Article IV applies only to Peru and Ecuador because of the presence of islands. But, as you have seen, there are also islands in the vicinity of the Chile-Peru maritime boundary. They are shown on historical Peruvian charts. But they are not acknowledged in any of Peru's written pleadings or any of the many diagrams showing islands presented by Peru in this case.

[37] CR 2012/28, p. 22, paras 48 and 49 (Lowe).

[38] CR 2012/27, e.g. p. 19, para. 11 (Wagner).

3.20 The presence of islands is in any event not the important point. The important point is that all maritime zones, general and insular, are delimited by the parallel of latitude at the point where the land frontier between Chile and Peru reaches the sea. That is the complete meaning of the second sentence of Article IV of the Santiago Declaration.

3.21 To summarise: the ordinary meaning of the second sentence of Article IV is that Chile and Peru —

- agreed that their maritime boundary was the parallel of latitude at the point at which their land frontier reached the sea; and

- used that maritime boundary to truncate the radial maritime projection of islands lying within 200 nautical miles of that boundary.

3.22 President Jiménez de Aréchaga (who was not nothing in international law) discussed the Santiago Declaration when he wrote the section on the Chile-Peru maritime boundary in Charney and Alexander's reference work *International Maritime Boundaries* (**Tab 25)**. As you see in the highlighted text at page 2, he summarised the effect of Article IV as being that "the general maritime zone of their countries shall be bounded by the parallel of latitude drawn from the point where the land frontier between the respective countries reaches the sea".[39]

3.23 Referring to Articles II and III of the Santiago Declaration, in which the three states claimed sovereignty over the continental shelf and the waters above it, he

[39] CCM, Vol. V, **Annex 280**, p. 1654.

characterised the boundary established in Article IV as "an all-purpose delimitation line".[40] He noted that it extended "not less than 200 nautical miles from the coast".[41]

3.24 He went on to remark that there "is some ambiguity in the wording of Article IV" because of the focus on the maritime zones of islands, and concluded as follows: "That the maritime boundary is, in fact, constituted by a parallel of latitude from the mainland was *confirmed* [I stress, confirmed] by the parties in an agreement signed on 4 December 1954. The first article of that agreement refers to the parallel which constitutes the maritime boundary between the two countries."[42] I will come to that 1954 agreement shortly.

3.25 On the next page you see that President Jiménez de Aréchaga linked the maritime delimitation using the parallel of latitude to the method of maritime projection used by the states concerned. You see highlighted on page 3 that he described the choice by the parties to agree on maritime boundaries following parallels of latitude as being a logical corollary of "the direct and linear projection of their land boundaries and land territories into the adjacent seas".[43]

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3.26 The ordinary meaning of Article IV is also confirmed by reference to the Minutes of the Commission that drafted it. As part of the inter-state conference that met in Santiago in August 1952, there was a Legal Affairs Commission. It was in that Commission that the Santiago Declaration was drafted. The first draft was presented by

[40] CCM, Vol. V, **Annex 280**, p. 1654.

[41] CCM, Vol. V, **Annex 280**, p. 1654.

[42] CCM, Vol. V, **Annex 280**, p. 1654, emphasis added.

[43] CCM, Vol. V, **Annex 280**, p. 1655.

Mr Cruz Ocampo,[44] the Director of the Legal Office of the Chilean Ministry of Foreign Affairs.

3.27 The Commission met twice, once on 11 August 1952 and once the next day. The Minutes, "*Acta*" in the original Spanish, were not merely preparatory works of the kind to which reference is optional under Article 32 of the Vienna Convention. They recorded agreements relating to the interpretation of the Santiago Declaration made in connection with its conclusion. Recourse to them as part of the context is mandatory under Article 31(2)(a) of the Vienna Convention.

3.28 I turn to the Minutes of the first day (**Tab 3)**. They set out the draft declaration as originally proposed by Mr Cruz Ocampo.

3.29 In this initial draft, what became Article IV was at that time Article III. It had three sentences.

3.30 The first, on page 5, reproduced the *tracé parallèle* method of maritime projection used by both Chile and Peru in 1947. It said:

> "The zone indicated comprises all waters within the perimeter formed by the coasts of each country and a mathematical parallel projected into the sea to 200 nautical miles away from the mainland, along the coastal fringe."[45]

3.31 The second sentence is the same as what ultimately became the first sentence of Article IV. It said:

> "In the case of island territories, the zone of 200 nautical miles will apply all around the island or group of islands."

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44 PM, Vol. II, **Annex 56**, p. 318.

45 PM, Vol. II, **Annex 56**.

3.32 The third sentence is the one from which the second sentence of Article IV as finally agreed was developed:

> "If an island or group of islands belonging to one of the countries making the declaration is situated less than 200 nautical miles from the general maritime zone belonging to another of those countries, according to what has been established in the first paragraph of this article, the maritime zone of the said island or group of islands shall be limited, in the corresponding part, to the distance that separates it from the maritime zone of the other State or country."

3.33 This draft text was not a model of clarity, but it did proceed, like the final text of Article IV, on the basis that the limits of the general maritime zone of each country were known, and that the radial projection of any island of an adjacent state would stop when it reached the general maritime zone of its neighbour.

3.34 The Ecuadorean delegate suggested that, and you see his words highlighted over the page, in a passage that Professor Lowe also emphasised, "it would be advisable to provide more clarity to article 3, in order to avoid any error in the interpretation of the interference zone in the case of islands".[46]

3.35 Professor Lowe said: "The purpose behind the redrafted point IV was 'to prevent any misinterpretation of the interference zone in the case of islands' Full stop!"[47] Actually, it is a comma, and after the comma comes the important passage in which the Ecuadorean delegate, Mr Fernandez, "suggested that the declaration be drafted on the basis that the boundary line of the jurisdictional zone of <u>each country</u> be

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[46] PM, Vol. II, **Annex 56**, p. 320.

[47] CR 2012/18, p. 20, para. 40 (Lowe).

the respective parallel from the point at which the frontier of the countries touches or reaches the sea".[48]

3.36 The translation submitted by Peru as Annex 56 to its Memorial does not include what happened next, but you will see it highlighted in the Spanish original and in the new translation at which we are looking behind **Tab 3**. The Minutes record that: *"*All the delegates were in agreement with that proposition."[49]

3.37 Thus, all three states agreed with the proposition that the Santiago Declaration "be drafted on the basis that the boundary line of the jurisdictional zone of each country be the respective parallel from the point at which the frontier of the countries touches or reaches the sea".[50] How this translates into Professor Lowe's "not the faintest hint of any concern with international maritime boundaries"[51] in the Legal Affairs Commission is, to me at least, something of a puzzle.

3.38 The Minutes also record that Chile and Peru agreed with Ecuador's proposal and that the President of the Legal Affairs Commission, Mr Ulloa, who was Peru's delegate, assigned the task of redrafting the article to himself and to Mr Cruz Ocampo of Chile.[52]

3.39 If you turn to the Minutes of the next day (**Tab 4**), you see on page 5 the words that they added at the end of the last sentence of what became Article IV. Those

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48 PM, Vol. II, **Annex 56**, p. 320.

49 PM, Vol. II, **Annex 56**, p. 319.

50 PM, Vol. II, **Annex 56**, p. 320.

51 CR 2012/28, p. 19, para. 35 (Lowe).

52 PM, Vol. II, **Annex 56**, p. 319.

words are "the parallel at the point at which the land frontier of the States concerned reaches the sea".[53]

3.40 That is what in the Minutes of the previous day had been agreed by all three states to constitute "the boundary line of the jurisdictional zone of each country",[54] "on the basis"[55] of which the Santiago Declaration was to be drafted.

3.41 On that basis all three states – acting in plenary – signed the Santiago Declaration. The Minutes confirm that the added phrase implemented the common intent of the parties to delimit their maritime boundaries.

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3.42 Throughout the written pleadings Peru ignored the agreement between the parties to the Santiago Declaration recorded in the 1952 Minutes. Silence was its tactic faced with this contemporaneous evidence of the agreed basis on which the words of Article IV of the Santiago Declaration were settled. That was also its tactic this week, and I would invite the Court to look back at tab 29 in Peru's second Judges' Folder, and see how the key wording is omitted from the translation there. Fortunately, of course, Article 31(2) of the Vienna Convention which requires the Court to interpret Article IV of the Santiago Declaration in the context of this agreement between the Parties, recorded in the 1952 Minutes, cannot be so easily defeated.

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53 CCM, Vol. II, **Annex 34**, p. 293.

54 PM, Vol. II, **Annex 56,** p. 320.

55 PM, Vol. II, **Annex 56**, p. 320.

3.43 You did hear much from Peru on Tuesday morning about the invitations to the 1952 Conference and about its agenda. I have five brief observations to make on those topics.

3.44 First, Chile's invitation to Peru specifically suggested that each participating country include in its delegation a member versed in international law, given the repercussions that the agreements to be reached at the Conference would very probably have on matters of the kind already covered in the declarations made by the Presidents of Peru and Chile in 1947.[56]

3.45 Second, Chile's invitation to Peru identified defence of their fishing industries and concerns about international regulation of whaling as the motivations for the conference. But they were not just gathering to talk. They were to study "the measures that should be adopted".[57] That is why international lawyers were invited.

3.46 Third, on Tuesday Peru sought to make something of the fact that the invitations to Peru and Ecuador were different. Since Ecuador had not made a unilateral proclamation in 1947, it stands to reason that the invitation sent to it was more detailed. It listed "Territorial Sea" as an agenda item. It referred to the "legalization of the declarations of the Presidents of Chile and Peru with respect to sovereignty over 200 miles of continental waters".[58] Ecuador was being invited to join Chile and Peru to provide multilateral support to the unilateral claims that Chile and Peru had already made. And the invitation to Ecuador specifically stated that "the determination of the Territorial Sea is set out as one of the objectives of the meeting."[59] Determination

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56 PM, Vol. III, **Annex 64**, p. 382.

57 PM, Vol. III, **Annex 64**, p. 382.

58 CCM, Vol. III, **Annex 59**, p. 487.

59 CCM, Vol. III, **Annex 59**, pp. 484 and 485.

means delimitation. It was also used by Chile and Peru, for example, in Article 3 of the Treaty of Lima by which they delimited their land boundary.[60]

3.47 Fourth, agendas and invitations are in any event of very limited relevance. What matters is what the states agreed when they met, and they agreed on boundary delimitation, and the Court will no doubt recall in this regard your predecessor's advisory opinion on *Employment of Women during the Night*.[61] Also, much more important that what any invitations did or did not say is what happened after the Conference – including the fact that after the delegates of the three states had signed the Santiago Declaration, all three Congresses later approved it.

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3.48 In a related line of argument, Peru contends in its written pleadings that the Parties sixty years ago were "feeling their way in uncertain, unchartered waters …",[62] and much of what we heard at the beginning of this week was to the effect that the Parties were not thinking about maritime boundaries in 1952, and so could not have delimited theirs by agreement. This is an attempt retrospectively to impute ignorance, and it is inconsistent not only with the text of the Declaration and the Minutes associated with it, but also by other contemporaneous circumstances.

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60 PM, Vol. II, **Annex 45**, pp. 228 and 236.

61 *Interpretation of the Convention of 1919 concerning Employment of Women during the Night, Advisory Opinion, 1932, P.C.I.J. Series A/B, No. 50*, pp. 369, 376; and cf the dissent of Baron Rolin-Jaequemyns, Count Rostworowski, Judges Fromageot and Schücking: *ibid*., p. 382.

62 PR, para. 4.7.

3.49 The Truman Proclamation had in 1945 already stated that in cases where the United States shared an entitlement to a continental shelf with an adjacent state, the boundary would be determined by agreement between the two states.[63]

3.50 You heard from Peru on Monday about the Truman Proclamation in the context of Professor Treves' history of the early stages of delimitation, specifically with respect to the continental shelf,[64] and it bears emphasis that the Truman Proclamation was cited by both Chile[65] and Peru[66] in their respective proclamations of 1947.

3.51 By the time of the Santiago Declaration, the International Law Commission was already working on the law of the sea, including delimitation of the continental shelf. In the ILC Judge Hudson had in 1950 expressed the view that attempts to find a generally applicable means to delimit overlapping entitlements to the continental shelf should be "set aside" since, at that time: "Custom and theory gave no enlightenment on the subject". Judge Hudson considered that the position was simply that "the States concerned must come to an agreement".[67]

3.52 In 1951 the ILC reported to the General Assembly that "boundaries should be fixed by agreement among the States concerned. It is not feasible to lay down any general rule which States should follow".[68] The position later evolved, but that is where things stood in 1952. Indeed, speaking at the Fourth International Conference of the Legal Profession in Madrid in July 1952, Gilbert Gidel considered that, and I quote –

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63 PM, Vol. III, **Annex 88**.

64 CR 2012/27, p. 54, para. 40 (Treves).

65 PM, Vol. II, **Annex 27**, p. 136, first recital.

66 PM, Vol. II, **Annex 6**, p. 26, fifth recital.

67 CCM, Vol. IV, **Annex 229**, p. 1361, paras 39 and 42.

68 CCM, Vol. IV, **Annex 230**, p. 1365.

"La difficulté de poser par avance les règles adéquates susceptibles de répondre à l'extrême diversité des situations de fait justifie la solution adoptée par la [Comission du droit international]." [69]

3.53 Sir Michael reminded you on Monday that the International Law Commission's Committee of Experts did not convene until 1953.[70] That Committee explained the equidistance methodology. In Santiago in 1952 the delegates of Chile, Peru and Ecuador did not have either that Committee or Peru's counsel of today to explain to them the equidistance method. Nor did they have the benefit of the judgments of this Court concerning equidistance such as that delivered in 2009 in *Romania v Ukraine*. The only articulated rule in 1952 was that states shall delimit their maritime boundaries by agreement.

3.54 This is *still* the primary rule: equitable solutions are not *jus cogens*, and depending on their situation states may differ on equity, as the Court has had recent occasion to observe. Once agreed, it is a matter of "grave importance" that maritime boundaries be respected.

3.55 Conscious of the Truman Proclamation and of the work of the ILC concerning delimitation of maritime boundaries by agreement, that is precisely what Chile, Peru and Ecuador did in the Santiago Declaration. It was not nothing!

4. THE 1954 COMPLEMENTARY CONVENTION

4.1 Under Article VI of the Santiago Declaration, the parties agreed that they would sign further agreements to establish general norms of regulation and protection

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[69] G. Gidel, *Le Plateau Continental, Fourth International Conference of the Legal Profession in Madrid, IBA, July 1952*, (1952), p. 17.

[70] CR 2012/27, p. 67, para. 34 (Wood).

within – I quote – "the maritime zone belonging to them", thus demonstrating that such zones had indeed been agreed.

4.2 In October 1954 they held a meeting of the Permanent Commission of the South Pacific to prepare for an inter-state conference to reinforce the joint position taken in the Santiago Declaration.

4.3 It needed reinforcement. The extended maritime claims made trilaterally in the Santiago Declaration had been met with protests by maritime powers[71] including the United Kingdom,[72] the United States,[73] Norway,[74] Sweden,[75] Denmark[76] and the Netherlands.[77]

4.4 The month after the preparatory meeting of the Permanent Commission of the South Pacific, the Onassis whaling fleet announced that it was going to flout the claims of sovereignty made in the Santiago Declaration. It then promptly and very publicly did so.

4.5 Peru's Navy used force to arrest a number of Onassis vessels, which were 110 nautical miles off its coast. The Harbour Master of Paita fined them three million dollars,[78] an amount that it is difficult to describe as "tentative". This fine was for "invading Peruvian jurisdictional waters without a permit".[79] He relied on the

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71 PM, Vol. III, **Annex 98**, p. 580.

72 CCM, Vol. III, **Annexes 60** and **68**.

73 CCM, Vol. III, **Annex 62**.

74 CCM, Vol. III, **Annex 63**.

75 CCM, Vol. III, **Annex 64**.

76 CCM, Vol. III, **Annex 65**.

77 CCM, Vol. III, **Annex 66**.

78 CCM, Vol. IV, **Annex 163**, p. 986.

79 CCM, Vol. IV, **Annex 163**, p. 987.

Santiago Declaration and Peru's 1947 Supreme Decree as bases for his decision.[80] They were not arrested for transgressing construction lines!

4.6 At the beginning of the next month, December 1954, Ecuador, Peru and Chile met as planned at their inter-state conference in Lima to reinforce their joint position and agree on further co-operation. Those were the purposes of the Complementary Convention of 1954. You will find it at **Tab 9**. Its full title is the "Complementary Convention to the Declaration of Sovereignty over the Maritime Zone of Two Hundred Miles".

4.7 The first recital of the Complementary Convention, beginning at the foot of page 4, recalled that Chile, Ecuador and Peru had already "proclaimed their Sovereignty over the sea along the coasts of their respective countries, up to a minimum distance of two hundred nautical miles from the said coasts, including the corresponding soil and subsoil of said Maritime Zone".[81] There are four salient points.

(a) First, and most obviously, the Complementary Convention acknowledged that the three states had already proclaimed their sovereignty over their maritime zones.

(b) Second, those claims were comprehensive. They were limited neither in time nor by any limitation to fisheries jurisdiction. They included the sea, the soil and the subsoil.

(c) Third, the existing claim applied to the "respective" coast of each country, indicating that each country claimed its own sovereign maritime zone.

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80 CCM, Vol. IV, **Annex 163**, p. 987.

81 PM, Vol. II, **Annex 51**, pp. 282-283, first recital.

(d) Fourth, Article 5 states that all of the provisions of the Complementary Convention "shall be deemed to be an integral and complementary part, and shall not [derogate from], the resolutions and agreements adopted"[82] in Santiago.

4.8 The Minutes relating to the Complementary Convention are also important, in that they record an important agreement about why boundary delimitation was *not* addressed in this particular convention. These are the Minutes that Sir Michael introduced on Tuesday, and he took Chile to task for the "very bold claim" that the Minutes show how the delegates in Commission I understood that an all-purpose maritime boundary had been established by Article IV of the Santiago Declaration. [83]

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4.9 You will find the Minutes for 2 December 1954 behind **Tab 6**. They record that Ecuador's delegate to the 1954 inter-state conference at Lima, Mr Salvador Lara, wished to include a provision in the Complementary Convention repeating what had already been agreed two years earlier in Santiago on the topic of maritime delimitation. On page 10 Mr Salvador Lara:

> "move[d] for the inclusion in this Convention of a complementary article clarifying the concept of the dividing line of the jurisdictional sea, which has already been expounded at the Conference of Santiago, but which would not be redundant to repeat herein." [84]

4.10 The 1954 Minutes record the joint response of the Peruvian and Chilean delegates.

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[82] PM, Vol. II, **Annex 51**, pp. 283-284, Art. 5.

[83] CR 2012/28, p. 33, para. 29 (Wood).

[84] CCM, Vol. II, **Annex 38**, p. 341.

4.11 Their joint position was that: "Article 4 of the Declaration of Santiago is already sufficiently clear and does not require a new exposition."[85]

4.12 The Chilean delegate involved was again Mr Cruz Ocampo. He had drafted Article IV of the Santiago Declaration together with his Peruvian colleague.

4.13 The Ecuadorean delegate to the 1954 conference persisted. He had not been in Santiago in 1952. The 1954 Minutes record that:

> "Since the Delegate of Ecuador insists on his belief that a declaration to that effect should be included in the Convention, because Article 4 of the Declaration of Santiago is aimed at establishing the principle of delimitation of waters regarding the islands, Mr. President asks the Delegate of Ecuador if he would accept, instead of a new article, that a record is kept in the Minutes of his speech."[86]

4.14 The Ecuadorean delegate gave a detailed response to the President's question:

> "The Delegate of Ecuador states that if the other countries consider that no explicit record is necessary in the Convention, he agrees to record in the Minutes that the three countries consider the matter on the dividing line of the jurisdictional waters resolved and that said line is the parallel starting at the point at which the land frontier between both countries reaches the sea."[87]

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85 CCM, Vol. II, **Annex 38**, p. 341.

86 CCM, Vol. II, **Annex 38**, p. 341.

87 CCM, Vol. II, **Annex 38**, p. 341.

4.15 You will see that immediately following this statement, the Peruvian delegate, Naval Commander Llosa, expressed "his agreement with doing that, but clarifies that this agreement *was already established* in the Conference of Santiago as recorded in the relevant Minutes as per the request of the Delegate of Ecuador, Mr. Gonzalez."[88] In fact the Ecuadorean delegate in Santiago in 1952 was Mr Fernández, not Mr Gonzalez. As we have seen he was the one that asked for a clarification of what became Article IV.

4.16 In 1954 Commander Llosa on behalf of Peru referred not only to the Santiago Declaration, but also to the agreement recorded in the 1952 Minutes. You will recall that the 1952 Minutes recorded Mr Fernández's suggestion that Article IV of the Santiago Declaration should be drafted, "on the basis that the boundary line of the jurisdictional zone of each country be the respective parallel from the point at which the frontier of the countries touches or reaches the sea".[89]

4.17 You will also recall that the 1952 Minutes recorded immediately thereafter that: "All the delegates were in agreement with that proposition".[90]

4.18 In 1954, Peru specifically relied on the 1952 Minutes to deny Ecuador's request for repetition.

4.19 Peru said then that it would be redundant to include an additional article in the Complementary Convention that would repeat, as Ecuador had wanted, that "the

88 CCM, Vol. II, **Annex 38**, p. 342, emphasis added.

89 PM, Vol. II, **Annex 56**, p. 320.

90 PM, Vol. II, **Annex 56**, p. 319.

parallel at the point at which the land frontier of the States concerned reaches the sea"[91] constituted the dividing line of the jurisdictional waters.

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4.20 The Minutes for the following day, 3 December 1954, are to be found at **Tab 7**. The session began with a reading of the Minutes from the previous day. The Ecuadorean delegate was evidently not satisfied with what he heard, and you will see the record of his intervention on page 10. The Minutes record that:

> "Following a reading of the Minutes, the Delegate of Ecuador, Mr. SALVADOR LARA, requested clarification of the statement made by the CHAIRMAN concerning the concept of the dividing line, since the CHAIRMAN had not proposed recording in the Minutes the statement made by the Delegate of Ecuador but that the three countries had agreed on the concept of a dividing line of the jurisdictional sea."[92]

4.21 The Ecuadorean delegate insisted that the Minutes should not merely record the point that *he* had made. He insisted that the Minutes record *the agreement between the three states*.

4.22 The Minutes go on to record that: "With this clarification, the CHAIRMAN declared the Minutes of the First Session approved."[93]

4.23 The clarification that was made was "that the three countries had agreed on the concept of a dividing line of the jurisdictional sea".[94]

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91 PM, Vol. II, **Annex 47**, p. 261, Art. 4.

92 CCM, Vol. II, **Annex 39**, p. 354.

93 CCM, Vol. II, **Annex 39**, p. 354.

Mr President, Members of the Court:

4.24 This part of the 1954 Minutes appears twice in the record, for the first time as Annex 57 to Peru's Memorial, the second as Annex 39 to Chile's Counter-Memorial. You should rely only on Annex 39 to Chile's Counter-Memorial, and you will see on your screens why this is so.

(a) This shows the first page of the 1954 Minutes as presented to the Court by Peru with its Memorial.

(b) On the right-hand side you now see the first page of the 1954 Minutes as submitted to the Court by Chile. The seal appearing in the top left is that of the Peruvian Foreign Ministry. The seal appearing in the top right is the seal of the Chilean Embassy in Peru. Peru's annex does not bear these official seals.

(c) A more significant difference is that the Peruvian reproduction is missing the lower part of the page. You now see on your screens a horizontal red line superimposed across each page. The content above the line is the same in both annexes, except for the official seals of the two states and some typographical errors in the Peruvian annex. Everything appearing below the line in the authentic Minutes produced by Chile is absent from the annex submitted to the Court by Peru.

(d) Now you see highlighting appearing over two relevant paragraphs in the authentic Minutes that are not in Peru's annex.

(e) With Annex 39 to its Counter-Memorial, Chile translated these two paragraphs, and this last frame shows what they said.

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[94] CCM, Vol. II, **Annex 39**, p. 354.

4.25 The approved minutes include the words that I have emphasised, which you can also find behind **Tab 42**: "the three countries had agreed on the concept of a dividing line of the jurisdictional sea".

4.26 That juridical fact cannot be changed no matter how enthusiastically one might take advantage of the delete function in a computer programme.

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4.27 The extracts from the 1954 Minutes that we have just seen record discussions leading to the Complementary Convention, but the content relevant to the present dispute is the part of the Minutes that constitutes an agreement between the parties about the correct interpretation of the Santiago Declaration, signed two years earlier. This aspect of the 1954 Minutes is a "subsequent agreement between the parties regarding the interpretation" of the Santiago Declaration, which "shall" be taken into account in accordance with Article 31(3)(a) of the Vienna Convention.

4.28 I turn now to another convention signed on the same day as the Complementary Convention. It is the Agreement Relating to a Special Maritime Frontier Zone, which is at **Tab 10**.

5. THE 1954 AGREEMENT RELATING TO A SPECIAL MARITIME FRONTIER ZONE

5.1 The first thing to notice about the Agreement is its title. In the written pleadings Peru abbreviated it to the "Agreement on a Special Zone".[95] Professor Lowe did likewise, although I thought I saw him blush.[96] The abbreviation, of course,

[95] PM, para. 2.6; PR, para. 2.81.

[96] CR 2012/29, p. 21, para. 20 (Lowe).

eliminates two significant words: "Maritime Frontier". Again Peru seeks to use the delete button instead of argument.

5.2 I will refer to the English translation of this agreement, beginning at page 4. This version shows certified corrections to the translation in the United Nations *Treaty Series*. The first recital of this treaty refers to "violations of the maritime frontier between adjacent States".[97]

5.3 This agreement was concluded to create a zone of tolerance for small vessels whose masters were not very good at knowing where they were. Such vessels had already violated — and then come the significant words in the recital — "the maritime frontier between adjacent States".

5.4 On Tuesday, Sir Michael said of this treaty that: "Its limited purpose was to avert disputes involving artisanal fishermen on small vessels fishing near to the coast."[98] He said that it was not a treaty "dealing in any sense with political matters".[99] He was continuing a theme from Peru's Reply.[100]

5.5 You see the true position in the penultimate recital. Granting small vessels the benefit of a zone of tolerance was to avoid "friction between the countries concerned, which may affect adversely the spirit of co-operation and unity which should at all times prevail among the signatory countries to the Santiago agreements".[101]

5.6 The three states were concerned with "friction between the countries", caused by boundary violations by fishermen. Consistent with the purposes of the

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97 PM, Vol. II, **Annex 50**, p. 276, first recital.

98 CR 2012/28, p. 28, para. 9. (Wood)

99 CR 2012/28, p. 29, para. 11 (Wood).

100 PR, para 4.18.

101 PM, Vol. II, **Annex 50**, p. 276, second recital.

Complementary Convention, the states wished to eliminate obstacles to their co-operation in defence of their maritime claims. Violations of the lateral maritime boundaries were such an obstacle.

5.7 Now we come to Article 1. It 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."[102]

5.8 The provision uses the present tense. It refers to a maritime boundary already in existence. The first recital indicates that it was violations of that existing boundary that prompted this new agreement. Matters could scarcely be clearer. Sir Michael sought somehow to explain Article 1 away but, put simply, he could not do so.

5.9 The special maritime frontier zone applying between Chile and Peru was illustrated in *Limits in the Seas*, published by the United States Department of State. The edition on your screens, and at **Tab 43**, is from 1979.

(a) The title in the box in the top right corner is "Maritime Boundary: Chile-Peru".

(b) The solid red line from the point where the land boundary reaches the sea to the point marked P is that maritime boundary.

(c) Point C is the point on the boundary where Chile's 200 nautical mile maritime entitlement stops.

(d) The line between Point C and Point P is the part of the maritime boundary that defeats Peru's claim to the area of high seas, labelled by Chile in these

[102] PM, Vol. II, **Annex 50**, p. 276, Art. 1.

proceedings the *alta mar* area, and by Peru the outer triangle. You will hear more about that from David Colson tomorrow.

(e) Relevant for us now are the areas shaded red on either side of the maritime boundary. Their caption says "10 nautical mile wide maritime frontier zones". They are the zones created by Article 1 of the Agreement Relating to a Special Maritime Frontier Zone.

(f) There is one maritime frontier zone on the Chilean side of the maritime boundary, to the benefit of straying Peruvian vessels.

(g) There is another on the Peruvian side of the maritime boundary, to the benefit of straying Chilean vessels.

(h) The area close to shore where there is no zone of tolerance is the area within 12 nautical miles of the coast. In that inshore area even artisanal fishing vessels were expected to be able to observe the maritime boundary without the need for a zone of tolerance. When time proved that expectation to have been too optimistic, Chile and Peru concluded formal agreements to signal the maritime boundary, a point to which I will come shortly.

5.10 On your screen now you see the equivalent sketch-map from a publication of the State Oceanic Administration Policy Research Office of the People's Republic of China (**Tab 44**). The publication from which this comes is titled "Collection of International Maritime Delimitation Treaties", published in 1989.

(a) You see in the top right corner that we have translated the caption: "Peru-Chile maritime boundary".

(b) The heading at the top of the page identifies the delimitation treaty that is the source of the boundary: the Santiago Declaration.

(c) In the centre of the diagram you see the parallel of latitude constituting the maritime boundary and the special maritime frontier zones on each side of it.

5.11 The parties could not have established these maritime frontier zones if they did not have a maritime frontier. Without a whisper of protest or a hint of a request for correction from Peru, that maritime frontier is exactly what *Limits in the Seas* has depicted for the last 33 years and the Chinese *Collection of International Maritime Delimitation Treaties* for the last 23 years.

5.12 Of course these publications contain the usual caveat that their publications do not represent official acceptance of the maritime boundaries they depict. But they serve the useful purpose of illustrating the special maritime frontier zones and they show how the Santiago Declaration and the Agreement Relating to a Special Maritime Frontier Zone were understood — without dispute or query.

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5.13 This week, Peru attempted to draw legal consequences from minor differences in terminology. You will recall the 1952 Minutes refer to "the boundary line of the jurisdictional zone of each country".[103] In one relevant part the 1954 Minutes refer to a "dividing line of the jurisdictional waters".[104] These are differences in terminology to which the parties attached no legal significance.

[103] PM, Vol. II, **Annex 56**, p. 320.

[104] CCM, Vol. II, **Annex 38**, p. 341.

5.14 What counts is that in 1952 and 1954 the parties made and then confirmed comprehensive claims of exclusive sovereignty and jurisdiction, and it was those claims of exclusive sovereignty and jurisdiction that they delimited by agreement.

5.15 But even if terminology did matter, as Peru now says, the Agreement Relating to a Special Maritime Frontier Zone ends the argument. Its first article uses the words "maritime boundary", "*límite marítimo*" in Spanish. It is the "maritime boundary" that is constituted by the parallel of latitude. The title refers to the "maritime frontier zone", *zona fronteriza maritima*. The first recital uses just plain "maritime frontier", *frontera marítima*. In plain English, or in plain Spanish, it could not be clearer what the parties were referring to.

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5.16 Conscious that there is no way to read Article 1 other than as an acknowledgement of an existing maritime boundary, Peru contended in its written pleadings that, because Article 1 of the 1954 Agreement refers to the maritime boundary between "the two countries", it refers only to the maritime boundary between Ecuador and Peru. That argument appears to have been dropped, and unsurprisingly so, although it does retain some forensic value to the Court in showing how Peru has been willing to run a line of argument that the 1952 Declaration did establish a maritime boundary, albeit only with Ecuador.

5.17 For good measure, I would just add that, in its written pleadings, Peru offered no plausible explanation for why the parties would have limited the entire effect of the 1954 Agreement to only one pair of states, or how the language identifies Peru and Ecuador as that pair, or why Chile would have been a party to the 1954 Agreement if its provisions were intended to have no effect for it.

5.18 The further difficulty for Peru so far as concerns the 1954 Agreement Relating to a Special Maritime Frontier Zone is that it has nothing to do with islands, and yet refers in express terms to "the parallel which constitutes the maritime boundary between the two countries". The Agreement does not mention islands once, and of course not. It has to do with creating a zone of tolerance on either side of the maritime boundary between adjacent states. So much, we would say, for the case that Article IV is correctly interpreted as confined to islands alone.

5.19 And just so that you can see how Article 1 of the Agreement Relating to a Special Maritime Frontier Zone would have to look if Peru's arguments on its interpretation were to be accepted (**Tab 45**).

5.20 Peru asks you to read into the treaty text the words shown in red. The true treaty text is shown in black. Peru asks you to delete the words with a line through them.

> *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~~ an informal and temporary line used only for the limited purposes of fisheries jurisdiction close to the shore between ~~the two countries~~ Ecuador and Peru*.

This is not to interpret the provision; it is to re-write it.

5.21 Just as you decided in the *Territorial Dispute* between Libya and Chad, in the Agreement Relating to a Special Maritime Frontier Zone, "the existence of a determined frontier was accepted and acted upon" and this subsequent agreement

"mentions 'the frontier' … with no suggestion of there being any uncertainty about it".[105]

5.22 The ordinary meaning of the Agreement Relating to a Special Maritime Frontier Zone is so clear that reference to its drafting in the 1954 Minutes is unnecessary. But I propose to take the Court to them for completeness. They are at **Tab 7.**

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5.23 We have already seen that the Ecuadorean Delegate, Mr Salvador Lara, was eager to reiterate at the 1954 Conference the agreement already reached by the parties on maritime delimitation in 1952. In the discussion of the Complementary Convention, he settled for recording in the Minutes the three states' agreement that they had already settled their maritime boundaries. When it came to the Agreement Relating to a Special Maritime Frontier Zone, he proposed that a reference to the boundary agreement should be included in the treaty text. This time he was successful.

5.24 Focusing on page 15 at **Tab 7,** you will see in the first highlighted paragraph that:

> "Upon the proposal by Mr. SALVADOR LARA, 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."[106]

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

[106] CCM, Vol. II, **Annex 39**, p. 356.

5.25 "This Article" is Article 1 of the Agreement Relating to a Special Maritime Frontier Zone. It was deliberately drafted to incorporate the "maritime boundary" that had been "already declared in Santiago". That maritime boundary clearly applied to all "neighbouring signatory countries", not only two of them.

5.26 The next paragraph of the Minutes shows that the initial draft of Article 1 was amended to incorporate a reference to the maritime boundary, and that paragraph of the Minutes contains exactly what became the first article of the treaty:

> "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."[107]

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5.27 The 1952 and 1954 Minutes formally record contemporaneous agreements between the three states on the proper interpretation of Article IV of the Santiago Declaration.

5.28 Peru omits to translate a key part of the 1952 Minutes. It omits entirely a key part of the 1954 Minutes. And instead, it offers the Court the witness statement of a Peruvian national, Mr Cristobal Rosas, written in August 2010, after receipt of Chile's Counter-Memorial.

5.29 As the Court has seen, the Santiago Declaration was drafted during the First Session of the Juridical Affairs Commission forming part of the broader Santiago Conference. The 1952 Minutes record the discussions. The attendance list in the Minutes does not include Mr Rosas.

[107] CCM, Vol. II, **Annex 39**, p. 356.

5.30 Mr Rosas nonetheless swears in his witness statement dated August 2010 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."[108] That "nothing about boundaries" line will now sound familiar to the Court. But it is self-evidently wrong as the 1952 Minutes record that the three states agreed that the Santiago Declaration be drafted on the basis that the boundary between their maritime zones was to be the parallel.

5.31 I would add that the record shows that Mr Rosas *was* at the relevant sessions of the inter-state conference in 1954. But in his witness statement written 56 years later, Mr Rosas is silent on every one of the multiple interventions and agreements concerning maritime delimitation recorded in those Minutes.

5.32 Mr Rosas is to be congratulated for his longevity but not, I fear, for his memory.

6. THE 1954 *ACLARACION*

6.1 The Final Act of the 1954 Conference contains an *Aclaración* adopted by the parties. It is at **Tab 8**. This "clarification" recorded agreed authentic interpretations of the treaties to which it related. The relevant part is that addressing the Agreement Relating to a Special Maritime Frontier Zone, which is at page 13.

6.2 The zone of tolerance established by that treaty was available only in cases of "accidental presence" of a vessel on the wrong side of the maritime boundary. In the clarification the parties agreed that whether a vessel's presence was "accidental"

[108] PR, Vol. II, Appendix A, p. 15.

for the purposes of Article 2 was to "be determined exclusively by the authorities of the country whose maritime jurisdictional boundary would have been transgressed."[109]

6.3 This clarification was assented to by the plenipotentiaries of the three states. In the case of Peru this was the Foreign Minister. He also signed the Agreement Relating to a Special Maritime Frontier Zone.

6.4 This clarification constitutes further clear contemporaneous recognition that the three states — all three — had delimited their maritime zones, and that there was a "maritime jurisdictional boundary" in place. Again, Sir Michael tried to explain this language away on Tuesday. Again, he could not.

7. AUTHENTIC INTERPRETATION OF THE SANTIAGO DECLARATION

7.1 The parties to the 1952 and 1954 agreements dealt expressly with the inter-relationship between those two sets of agreements. At **Tab 10**, you see on page 5 that in Article 4 of the Agreement Relating to a Special Maritime Frontier Zone, the parties agreed that all of its provisions "shall be deemed to be an integral and complementary part of, and not to derogate from, the resolutions and agreements adopted at the"[110] Santiago Conference.

7.2 Of course first among such agreements was the Santiago Declaration. It was the foundational treaty in which the states agreed on the sovereign character of their claims and delimited those claims.

7.3 In the Complementary Convention, they reinforced their claims and agreed to co-operate in defending them.

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[109] CCM, Vol. II, **Annex 40**, p. 369.

[110] PM, Vol. II, **Annex 50**, p. 277, Art. 4.

7.4 In a suite of five other agreements all signed with the Complementary Convention on the same day in Lima in 1954, they agreed on a range of other specific matters of implementation:

(a) first, sanctions for violation of each state's maritime zone,[111]

(b) second, surveillance and control of each state's maritime zone,[112]

(c) third, the granting of permits by each state for exploitation of the resources in its maritime zone: note that this applied to all resources, not just to fisheries,[113]

(d) fourth, the setting of quotas by the Permanent Commission for the South Pacific for the hunting of sperm whales,[114] and, the one most relevant for our purposes,

(e) fifth, the Agreement Relating to the Special Maritime Frontier Zone.

7.5 The final article of each one of the six treaties of 1954 was the same. Each provided that it was deemed to be an integral and complementary part of the resolutions and agreements adopted in Santiago.

7.6 The three states made explicit that the multiple agreements they had signed in 1952 and 1954 were to be considered as a coherent system.

7.7 The following parts of the Agreement Relating to a Special Maritime Frontier Zone are deemed by its parties to be an integral and complementary part of the Santiago Declaration:

(i) first, the reference to the "maritime frontier zone" in the title;

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111 PR, Vol. II, **Annex 34**.

112 PR, Vol. II, **Annex 35**.

113 PR, Vol. II, **Annex 36**, esp. Art. 1.

114 PR, Vol. II, **Annex 37**.

(ii) second, the reference in the first recital to "violations of the maritime frontier between adjacent States"; and

(iii) third, the reference in Article 1 to "the parallel which constitutes the maritime boundary between the two countries".

7.8 And none of those explicit references to the existing maritime boundary had anything to do with islands. The maritime boundary to which the parties repeatedly referred in this 1954 Agreement is the one that they had already agreed in 1952.

8. DOMESTIC APPROVAL

8.1 The Santiago Declaration and the related treaties of December 1954 were presented together to Peru's Congress for approval in May 1955. Congress duly granted that approval, but before doing so, its Foreign Affairs Committee studied and wrote a report on those agreements.

8.2 That report is another document that appears multiple times in the record of this case, but again the Court must be careful which annex it refers to. The references are in the Rejoinder,[115] but in brief, this Congressional Report contains eleven pages. All of them and translations of all relevant extracts are available behind **Tab 12**, which reproduces Annex 78 to the Rejoinder.

8.3 I draw your attention to the passage translated in your binders at page 14, third paragraph. In connection with the 1954 agreement the Congressional Report referred to "violations of maritime frontiers" — note the plural — "between the neighbouring States".[116]

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[115] CR, para. 2.80.

[116] CR, Vol. III, **Annex 78**, p. 472.

8.4 In its Memorial Peru filed three pages of the Report, but not this page. In its Reply Peru did file the whole of the Congressional Report, but it did not translate this passage. The Reply states, and I quote: "What is significant is that … the 'Report' … contained no reference to maritime boundaries."[117] This is simply incorrect, and it is symptomatic of Peru's tendency to ignore or edit the evidence.

8.5 One of the authors of the Congressional Report was Congressman Peña Prado. He gave a speech to Congress on 5 May 1955, the day before Peru's Congress approved the package of the Santiago Declaration and the 1954 treaties.

8.6 The Parties differ as to the reliability of the only verbatim record of Congressman Prado's speech that is so far available.[118] When asked, the librarians at Peru's Congressional Library stated that the verbatim records of Peru's Congress for the period 1947 to 1955 are missing. They are thus, so to say, *inédites*. Perhaps someone pushed the delete button on them as well!

8.7 But you do not need the Congressional records, since you do have the verbatim transcript of Congressman Peña Prado's statement as published in a Peruvian newspaper of record two days after it was delivered. It is at **Tab 13**. Mr Peña Prado explained to Congress the purposes of the Santiago Conference of 1952. At page 7 you see that he said:

> "The purposes of these conferences held in Santiago de Chile are the declaration of the maritime zone, the Agreements signed for establishing the control and surveillance of our seas, for establishing the maritime boundaries between the

[117] PR, para. 3.163.

[118] See CR, paras 2.74-2.81.

signatory countries, for determining the sanctions, the permits and the meeting of the Permanent Commission that must take place every year."[119]

8.8 The next day Congress approved the Santiago Declaration and the 1954 treaties that were deemed to form an integral and complementary part of it.

9. THE 1955 PROTOCOL OF ACCESSION TO THE SANTIAGO DECLARATION

9.1 In October 1955, Chile, Ecuador and Peru signed a protocol to the Santiago Declaration by which it was made open for accession by other states in the region.[120] It specified that "at the moment of accession, every State shall be able to determine the extension and form of delimitation of its respective zone".[121] I stress "delimitation", and also recall how Peru's counsel sought earlier in the week to suggest that this was a largely unknown concept in the 1950s, and how states were concerned only with the sideless extension of their zones to the sea.

9.2 As to the Protocol, the contemporaneous memoranda of Peru and Chile explain that the method of boundary delimitation adopted by the three original states party to the Santiago Declaration would not necessarily apply to states acceding to it subsequently. Behind **Tab 14** is a memorandum written by the Peruvian Embassy in Ecuador. It was written in June 1955. In this memorandum Peru explained that for acceding states it was "inclined to delete" Article IV of the Santiago Declaration. Peru noted, and this is the significant part which you see at page 3, that the effect of Article

[119] CCM, Vol. IV, **Annex 246**, p. 1469.

[120] PM, Vol. II, **Annex 52**.

[121] PM, Vol. II, **Annex 52**, p. 291.

IV was to "establish the frontier between the countries – inapplicable in other locations".[122]

9.3 Chile concurred. Its memorandum of August 1955 is at **Tab 15**. At page 3, Chile observed that it was

> "indispensable that the possibility of making reservations to the principles on delimitation of the maritime frontier should be set out in the Protocol, due to the fact that, for example, the principle of the Parallel stipulated in the Declaration of Santiago is practically inapplicable to frontiers of other countries".[123]

9.4 Chile and Peru thought that the method by which they had delimited their own maritime boundary might not be applicable elsewhere. In doing so they acknowledged:

(a) first, that they had delimited their own maritime boundary in Article IV of the Santiago Declaration, and

(b) second, that they had done so using a method that they considered to be appropriate to their own geography.

10. THE SIGNALLING AGREEMENTS OF 1968 AND 1969

10.1 Many of the agreements that I have discussed are trilateral. I turn now to a series of agreements that concerned only Chile and Peru. Through these agreements, reached in 1968 and 1969, Chile and Peru gave physical effect to and signalled their maritime boundary. They were attempting to reduce transgressions of that boundary.

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[122] CCM, Vol. III, **Annex 70**, p. 537.

[123] CCM, Vol. III, **Annex 71**, p. 541.

10.2 In April 1968 delegates of Chile and Peru met at the seaward portion of their land frontier. They jointly recorded their task in the document at **Tab 17**. At page 4 you see that it was to conduct "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".[124]

10.3 The next year Chile and Peru established a Mixed Commission. Its members signed an *Acta* on 22 August 1969. It is at **Tab 22**. As you see at page 1 its complete title is the "The Act of the Chile-Peru Mixed Commission in Charge of Verifying the Location of Boundary Marker No. 1 and Signalling the Maritime Boundary".[125]

10.4 At page 3 the Members of the Mixed Commission together recorded their purpose in the most explicit of terms.

> "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 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."[126]

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[124] PM, Vol. II, **Annex 59**, p. 336.

[125] CCM, Vol. II, **Annex 6**, p. 33.

[126] CCM, Vol. II, **Annex 6**, p. 35.

10.5 It is hardly a surprise that on Tuesday morning Peru passed over the agreements of 1968 and 1969 as quickly as it possibly could. To ensure that the Court is properly informed on this important series of agreements, Jan Paulsson will elaborate on them further tomorrow.

10.6 The simple point for now is that States do not agree to give effect to maritime boundaries that do not exist.

11. CONCLUSION

11.1 Mr President, Members of the Court, on Tuesday Peru characterised Chile's case as relying on "a number of miscellaneous events".[127] I therefore conclude with ten brief reflections on a chronology that is characterised by its consistency, and with one short point on the law.

(a) First, in 1947 Chile and Peru issued concordant unilateral proclamations in which they claimed sovereignty over areas extending 200 nautical miles to sea that abutted perfectly and did not overlap.

(b) Second, in August 1952 the Parties concluded the Santiago Declaration. They agreed between themselves that each of them was sovereign over its own 200 nautical mile exclusive maritime zone. They delimited the maritime boundaries between them at "the parallel at the point at which the land frontier of the States concerned reaches the sea".

(c) Third, in December 1954 the parties to the Complementary Convention formally recorded in the Minutes their agreement that they had already delimited the maritime boundaries between them in 1952. They agreed that the boundary is

[127] CR 2012/28, p. 26, para. 1 (Wood).

the parallel of latitude of the point where the land boundary of the states concerned reaches the sea. On the basis of this agreement they considered it redundant to reiterate the effect of Article IV of the Santiago Declaration in the Complementary Convention.

(d) Fourth, at the same inter-state conference in December 1954, as a supplement to the Santiago Declaration, the parties signed the Agreement Relating to a Special Maritime Frontier Zone. That Agreement created zones of tolerance on either side of the pre-existing maritime boundary and is replete with references to that boundary. The parties deemed all of those references to be an integral and complementary part of the Santiago Declaration. Peru's Foreign Minister signed the Agreement.

(e) Fifth, in January 1955 that same Foreign Minister, together with the President of Peru, issued a Supreme Resolution concerning the correct depiction of Peru's maritime zone for the purpose of cartographic and geodesic works. You will hear more about it tomorrow from David Colson. It specified that: "In accordance with clause IV of the Declaration of Santiago" the outer 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".[128]

(f) Sixth, on 4 May 1955 the Peruvian Congress received the report of its Foreign Affairs Committee, which referred to Peru's "maritime frontiers" in the plural.

(g) Seventh, on 5 May 1955 Dr Peña Prado spoke to that report in the Peruvian Congress, noting, again in the plural, that the Santiago Conference of 1952 had

[128] PM, Vol. II, **Annex 9**, p. 39, Art. 2.

included among its aims "establishing the maritime boundaries between the signatory countries".[129]

(h) Eighth, on that basis, the next day the Congress of Peru approved the Santiago Declaration, the Complementary Convention and the Agreement Relating to a Special Maritime Frontier Zone.[130]

(i) Ninth, when in 1955 the parties to the Santiago Declaration were opening it to accession by other states, they acknowledged that in Article IV they had delimited their maritime boundaries using parallels of latitude. They expressly dis-applied that method for acceding states.

(j) Tenth, in 1968 and 1969, Chile and Peru agreed to give physical effect to their maritime boundary by constructing two lighthouses to signal it. In doing so they expressly confirmed the existence of their agreed maritime boundary, and that it is the parallel of latitude passing through the first boundary marker of their land boundary.

Mr President, Members of the Court:

11.2 History is like life — "just one damn thing after another".[131]

11.3 The life of this boundary has been one of agreement, beginning with the delimitation agreement in 1952. The subsequent history has been just one affirmation after another, in 1954, in 1955, in 1968 and 1969 and on many occasions before and since.

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[129] CCM, Vol. IV, **Annex 246**, p. 1469.

[130] PM, Vol. II, **Annex 10**.

[131] "Life is just one damn thing after another", E. Hubbard, *The Philistine*, Vol. 30, December 1909, p. 32.

11.4 Now, Peru has skipped over much of this material, and has sought to fill the gaps in its case with the repeated recantation of this Court's words in *Nicaragua v. Honduras* that "[t]he establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed".[132] The Court, I am sure, will already have the point but *Nicaragua v. Honduras* was a case where there was no written agreement, with Honduras claiming that a boundary existed by virtue of a tacit agreement. That, of course, is not this case. Where agreements do exist, as here, the Court's task is to interpret those agreements, and that is the point that the Court made quite explicitly in *Romania v. Ukraine*.

11.5 Given the number of times we have heard references to heavy burdens and the like this week, I hope I can be forgiven for going through the relevant passage. The Court held:

> "A preliminary issue concerns the burden of proof. As the Court has said on a number of occasions, the party asserting a fact as a basis of its claim must establish it. Ukraine placed particular emphasis on the Court's dictum in [*Nicaragua v. Honduras*] that '[t]he establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed'. That dictum, however, is not directly relevant since in that case no written agreement existed and therefore any implicit agreement had to be established as a matter of fact, with the burden of proof lying with the State claiming such an agreement to exist. In the present case, by contrast, the Court has before it the 1949 Agreement and the subsequent agreements. Rather than having to make findings of fact, with one or other party bearing the burden of proof as regards claimed facts, the Court's task is to interpret those agreements."[133]

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[132] *Case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, I.C.J. Reports 2007,* p. 735, para. 253.

[133] *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009,* p. 86, para. 68 (references omitted).

11.6 That is also the task before the Court as we see it in this case, and Peru's emphasis on burden of proof is misconceived – as well as notably defensive.

Mr President, Members of the Court:

11.7 On Monday afternoon Peru acknowledged, as elemental rules of international law compelled it to do, that the primary means to delimit a maritime boundary is by agreement.[134] It is common ground that if the Parties have delimited their boundary by agreement, then that is dispositive of this case. I have shown that there *was* such an agreement in 1952, confirmed in 1954. *Quod*, Mr President, Members of the Court, *erat demonstrandum*.

[134] CR 2012/27, p. 34, para. 2 (Bundy).