CHAPTER V

THE MAP EVIDENCE CONFIRMS THAT THERE IS NO PRE-EXISTING MARITIME DELIMITATION BETWEEN THE PARTIES

I. Introduction

5.1 In this chapter, Peru will show that the official cartography of the Parties confirms that there is no pre-existing maritime delimitation between them. Section II discusses the fact that, contrary to normal State practice and, indeed, to Chile's own delimitation practice, no map has ever been issued jointly by the Parties depicting a maritime boundary between them as part of a maritime delimitation agreement. In Section III, Peru will then review the official cartography of both Parties to show that Peru has never published any official map indicating that a delimited maritime boundary exists between itself and Chile and that, for some 40 years after the 1952 Declaration of Santiago and 1954 instruments were concluded, Chile published no such map either. It was only in 1992 that Chile, in a belated and self-serving fashion, began to change its cartography by publishing a map relating to its "Presential Sea" claim which purported to show a maritime boundary between itself and Peru extending along a line of latitude.

II. Contrary to Chile's Own Practice, There Was No Delimitation Map Accompanying the 1952 or 1954 Instruments

5.2 The previous chapter has shown that there was no agreement on maritime delimitation between Peru and Chile either in the 1952 Declaration of Santiago or in the 1954 Agreement on a Special Zone. Neither Peru nor Chile conducted itself at the time as if it considered that the two States were concluding a formal maritime delimitation agreement. No details of any delimitation line were specified by the Parties, no co-ordinates or other technical information were indicated regarding the course or endpoint of the boundary, and no map was attached to either instrument depicting an agreed delimitation line.

5.3 International law attributes considerable importance to maps that are attached to, and form an integral part of, an international boundary agreement. As the Chamber stated in its Judgment in the *Burkina Faso-Mali* case with respect to the intrinsic legal force of maps for the purpose of establishing territorial rights:

> "Of course, in some cases maps may acquire such legal force, but where this is so the legal force does not arise solely from their intrinsic merits: it is because such maps fall into the category of physical expressions of the will of the State or States concerned. This is the case, for example, when maps are annexed to an official text of which they form an integral part."[276]

5.4 In the present case, and considering the reasoning of the Chamber *a contrario*, the absence of a map attached to either the 1952 Declaration of Santiago or the 1954 Agreement on a Special Zone depicting a maritime boundary, when coupled with the absence of other details ordinarily found in maritime delimitation agreements, is significant. This is particularly the case where the practice of one of the Parties – Chile – demonstrates that when Chile intended to enter into a formal and binding maritime delimitation agreement, it took care to set out the details of the delimitation line in the text of the

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[276] *Frontier Dispute, Judgment, I.C.J. Reports 1986*, p. 582, para. 54.

agreement itself and to attach an illustrative map of the boundary which formed an integral part of the agreement.

5.5 It will be recalled that in the Salta Declaration of 24 July 1971, the Presidents of Chile and Argentina reaffirmed the rights of both countries to establish their jurisdiction over the sea adjacent to their coasts up to a distance of 200 nautical miles taking into account the preservation and exploitation of the resources of the sea[277]. Much like the 1952 Declaration of Santiago, this was a Declaration of principle regarding the seaward extent of the parties' maritime entitlements not an instrument dealing with the delimitation of the maritime boundary between them.

5.6 The delimitation of the maritime boundary, in contrast, was the subject of a subsequent, specific delimitation treaty between Chile and Argentina concluded in 1984[278]. This agreement included all of the details of the delimitation and illustrative map.

5.7 Article 7 of that 1984 Treaty established the maritime boundary (dealing with sovereignty over the sea, sea-bed and subsoil) between Chile and Argentina seaward from the end of the existing boundary in the Beagle Channel that had been decided in an earlier arbitration. It specified by co-ordinates six points through which the delimitation line ran, and it left open the potential prolongation of the boundary beyond the final, or most seaward, point by stipulating that the EEZ of Chile shall extend south of the last point fixed by the agreement "up to the distance permitted by international law". Article 7 also stated that the maritime boundary so described was shown on a map that was annexed to the agreement as Map No. 1. Article 17 of the Treaty, in turn, provided that the map referred to in Article 7 formed an integral part of the Treaty. A copy of the relevant map attached to the Chile-Argentina Treaty is reproduced as **Figure 5.1**.

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[277] See para. 3.28 above.

[278] Treaty of Peace and Friendship between Chile and Argentina, 29 November 1984. Annex 53.

5.8 Nothing of the kind exists with respect to any alleged pre-existing maritime boundary between Peru and Chile. There is no agreed map showing the course of a boundary line, no detailed description of the delimitation line, no description of what maritime zone or zones were being delimited and no indication of the endpoint of the boundary.

5.9 When considered in connection with the fact that for some 40 years after the 1952 Declaration of Santiago and the 1954 Agreement on a Special Zone were signed Chile issued no map purporting to depict a maritime boundary with Peru[279], these facts confirm that there is no maritime boundary between the Parties in existence.

III. The Cartography of the Parties

5.10 For its part, Peru has not published official maps depicting a maritime boundary between itself and Chile. This is entirely consistent with the fact that no delimitation agreement has ever been concluded between the Parties and that the 1952 and 1954 instruments did not constitute delimitation agreements. In short, both before 1952 and afterwards, official maps issued by Peru show no maritime boundary.

5.11 Chile's own mapping practice has been equally consistent, at least up until 1992 when Chile published a map illustrating its claim to a "Presential Sea" in which a "maritime boundary" with Peru was implied. Thereafter, starting in 1994, Chile also began to change its nautical charts to depict an alleged maritime boundary between itself and Peru. In other words, as far as Peru is aware, for some 40 years after the 1952 and 1954 instruments were concluded, Chile never published any map or chart depicting an existing maritime boundary with Peru. It was only in 1992 that Chile's cartography began to change in a self-serving manner.

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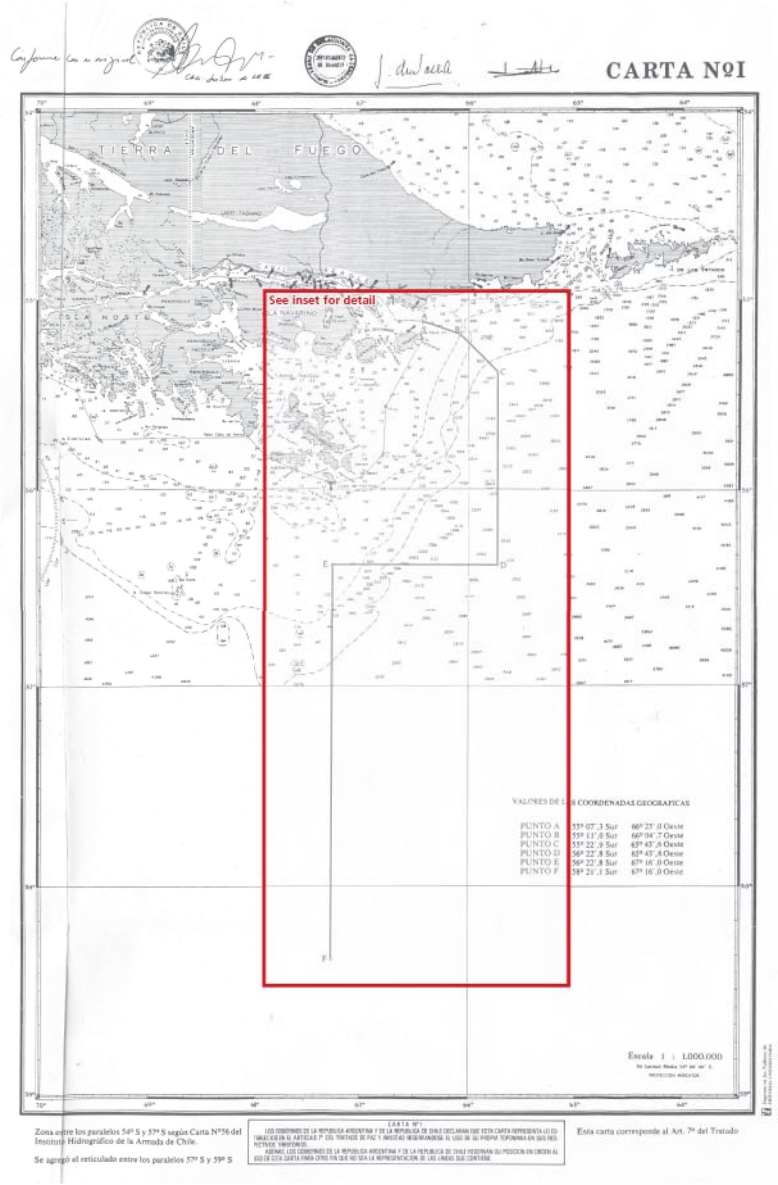
[279] See paras. 5.18 *ff.*



MAP No.1

Annexed to the Chile/Argentina Maritime Delimitation Treaty of 1984

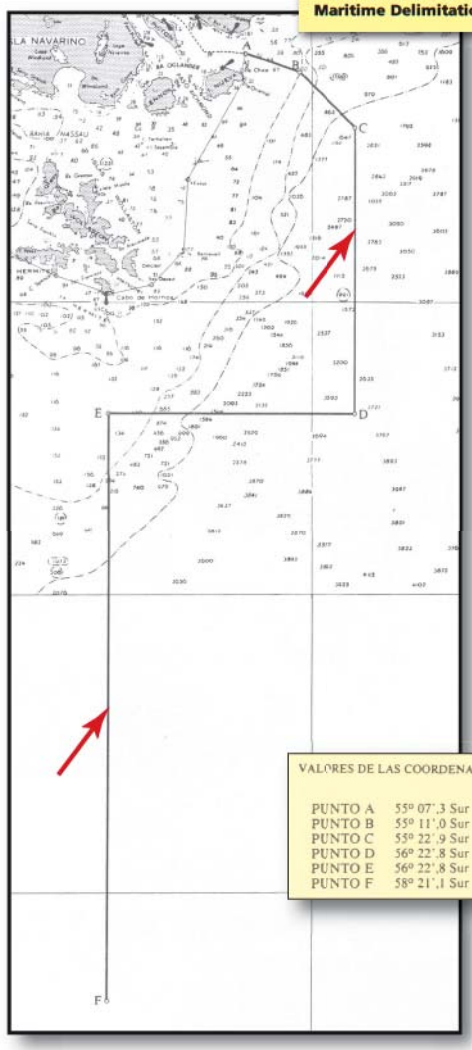


Figure 5.1

5.12 To illustrate the position, Peru has included herein a number of representative maps of the Parties. A more extensive compendium of the relevant maps may be found in the Maps and Figures Annex included as Volume IV to this Memorial.

A. Peru's Maps

5.13 In Peru, official political maps representing boundaries may only be published with the approval of the Ministry of Foreign Affairs[280]. As noted above, at no point has Peru's official cartography ever depicted a maritime boundary with Chile. This was the case before the 1952 Declaration of Santiago was signed and afterwards as well.

5.14 In the period after the 1929 Treaty of Lima the map of Peru published by the Geographical Service of the Army in 1938 (**Figure 5.2** in Volume IV) shows the land boundary between Peru and Chile agreed in 1929 but, evidently, no maritime boundary offshore. Other similar maps published for the most part by the Military Geographic Institute of Peru in 1952, 1953 and 1967 are included in Volume IV as **Figures 5.3, 5.4** and **5.5**, and also depict no maritime boundary.

5.15 For example, the map entitled "Republic of Peru, 1967, Political Map", published in that year by the Military Geographic Institute of Peru, indicates very clearly *Concordia* as the starting-point of the land boundary established pursuant to the 1929 Treaty of Lima and shows no maritime boundary with Chile. It is **Figure 5.5** in Volume IV.

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[280] This provision was established during the fifties by means of Supreme Decree No. 570 of 5 July 1957. Annex 11.

5.16 The 1989 edition of the *Atlas of Peru* published by the Ministry of Defence and the National Geographic Institute also depicts no maritime boundary between Peru and Chile. As one of the plates taken from that Atlas, reproduced as **Figure 5.6** in Volume IV, shows, the starting-point of the land boundary is situated at *Concordia*[281], but no maritime boundary is shown extending seaward of that point.

5.17 All of these maps are conspicuous for the complete absence of any maritime boundary existing between the Parties. This is significant given the fact that the maps otherwise show Peru's political boundaries and that Peru claimed sovereignty over the maritime domain lying off its coasts. Had an international boundary with Chile existed, it would be expected to be depicted on these official Peruvian maps, which it is not.

B. Chile's Maps

5.18 Chile's official cartography, at least up until 1992, also reveals no trace of a pre-existing maritime boundary with Peru.

5.19 Early twentieth century Chilean maps, such as **Figure 5.7** in Volume IV (which is labelled "Republic of Chile 1935"), shows no maritime boundary between the Parties. The same situation is depicted on **Figure 5.8**, reproduced here. It is a large-scale 1941 map of the northern part of Chile in the vicinity of the town of Arica and the land boundary with Peru. While no maritime boundary is shown, the map does show the starting-point on the land boundary which is clearly labelled *Concordia* on the map.

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[281] The map labels the point where the land boundary meets the sea as 'Hito Concordia' ('Marker Concordia'). However, 'Marker Concordia' is Marker No. 9, and is located about 7 kms. far from the shore.

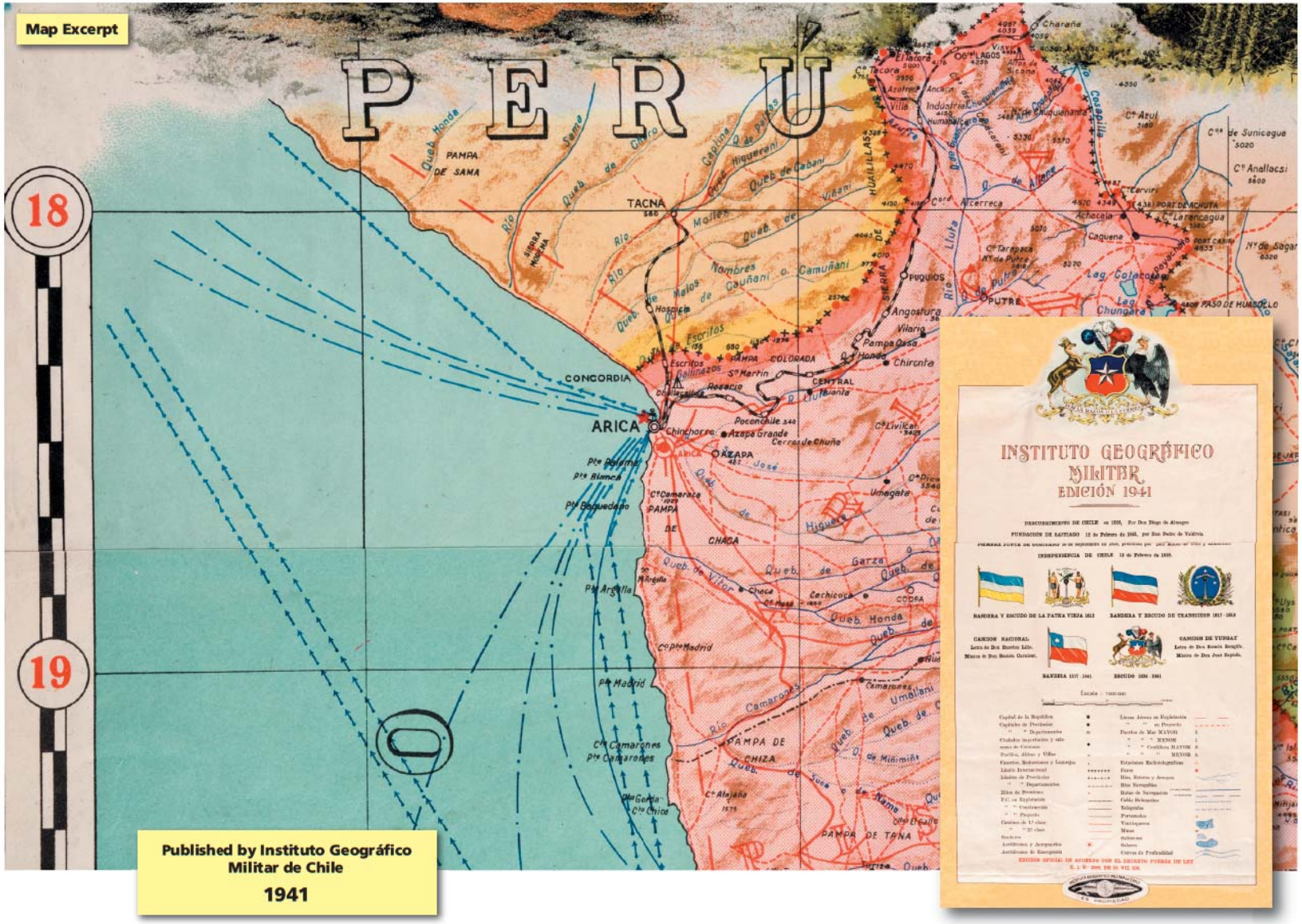
Map Excerpt
PERÚ
18
19
TACNA
ARICA
CONCORDIA
PAMPA DE SAMA
PAMPA DE CHIZA
PAMPA DE TANA
PUQUIOS
PUTRE
Published by Instituto Geográfico Militar de Chile
1941
INSTITUTO GEOGRÁFICO MILITAR
EDICIÓN 1941

Figure 5.8

5.20 Chile's maps did not change after the conclusion of the 1952 Declaration of Santiago and the 1954 Agreement on a Special Zone. **Figure 5.9** and **5.10** in Volume IV are official Maps dating from 1954 and 1955, published by the Military Geographic Institute of Chile[282]. Neither of them shows a maritime boundary. For example, **Figure 5.10** is a 1955 map which again depicts the starting-point on the land boundary as lying at *Concordia* in accordance with the 1929 Treaty of Lima, but it shows no maritime boundary seaward of that point. Similar maps included in Volume IV, dated 1961, 1963, 1966, 1971, 1975 and 1977 as **Figures 5.12, 5.13, 5.14, 5.15, 5.16** and **5.17**, are all noteworthy for the absence of any indication that a maritime boundary existed between Peru and Chile at the time. Also included in Volume IV is a 1989 map entitled "Political Administrative Map of Chile" published by the Chilean Military Geographic Institute. It, too, is conspicuous for the absence of any maritime boundary[283].

5.21 Turning to Chile's large-scale nautical charts of the boundary region in the vicinity of the land boundary, **Figure 5.19**, reproduced here, is a 1973 edition of Chart No. 101 labelled *Arica*. As can be seen from the enlargement of the relevant portion of the chart, no maritime boundary is depicted, and the land boundary can be seen to extend in an arc over its last part to the point where it meets the sea pursuant to the 1929 Treaty of Lima. There are two dashed lines on the map extending from Boundary Marker No. 1. These lines indicate the range of visibility of the light beacon established a short distance inland from the sea, not a maritime boundary, but this light beacon does not correspond to the actual starting-point on the land boundary, which can be seen on the Chart as lying further to the south.

5.22 On 25 May 1979, Chile issued a somewhat smaller-scale chart (Chart No. 100) covering the area from the *Rada de Arica* down to *Bahía Mejillones del Sur* located further to the south. This chart is reproduced as **Figure 5.20** here, and it too depicts no maritime boundary between Peru and Chile.

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[282] The same can be seen in 1959 Map revised by the Military Geographic Institute of Chile, included as **Figure 5.11**.

[283] See **Figure 5.18** in Vol. IV.

5.23 The same thing can be seen on Chile's Chart dated 20 November 1979 covering the area identified as the *Rada de Arica a Bahía de Iquique*. Once again, no maritime boundary appears on the chart which is attached as **Figure 5.21** in Volume IV.

5.24 As noted in Section II above, in 1984 Chile and Argentina concluded a formal maritime boundary agreement seaward of the boundary decided in the Beagle Channel Arbitration which included a map depicting the delimitation line. Consequently, Chile's large-scale charts of this area dated 1986 began to depict this boundary with Argentina, as can be seen in **Figure 5.22**. At the same time, however, Chile's charts of the Arica region in the vicinity of the land boundary with Peru continued to show no similar maritime boundary with Peru, as can be seen in the 1989 Chilean Chart *Rada y Puerto Arica* reproduced as **Figure 5.23**.

5.25 To Peru's knowledge, it was only in 1992 that Chile began to change its mapping with regard to the relevant area[284]. **Figure 7.3** in Volume IV is a very small scale graphic prepared by the Hydrographic and Oceanographic Service of the Chilean Navy in 1992 for the purpose of illustrating Chile's "Presential Sea" theory. While the map is not easy to read, it appears to include a line in the north extending from the land boundary between Peru and Chile out to sea.

5.26 The situation became clearer when, in 1994, Chile re-issued its former Chart No. 100 (*Rada de Arica a Bahía de Mejillones del Sur* as a new series (Chart No. 1000)). A copy of the relevant portion of this Chart appears as **Figure 5.24**. It showed for the first time a dashed line extending seaward west of the land boundary with the words "Peru" and "Chile" placed on the map to the north and south of the dashed line, respectively.

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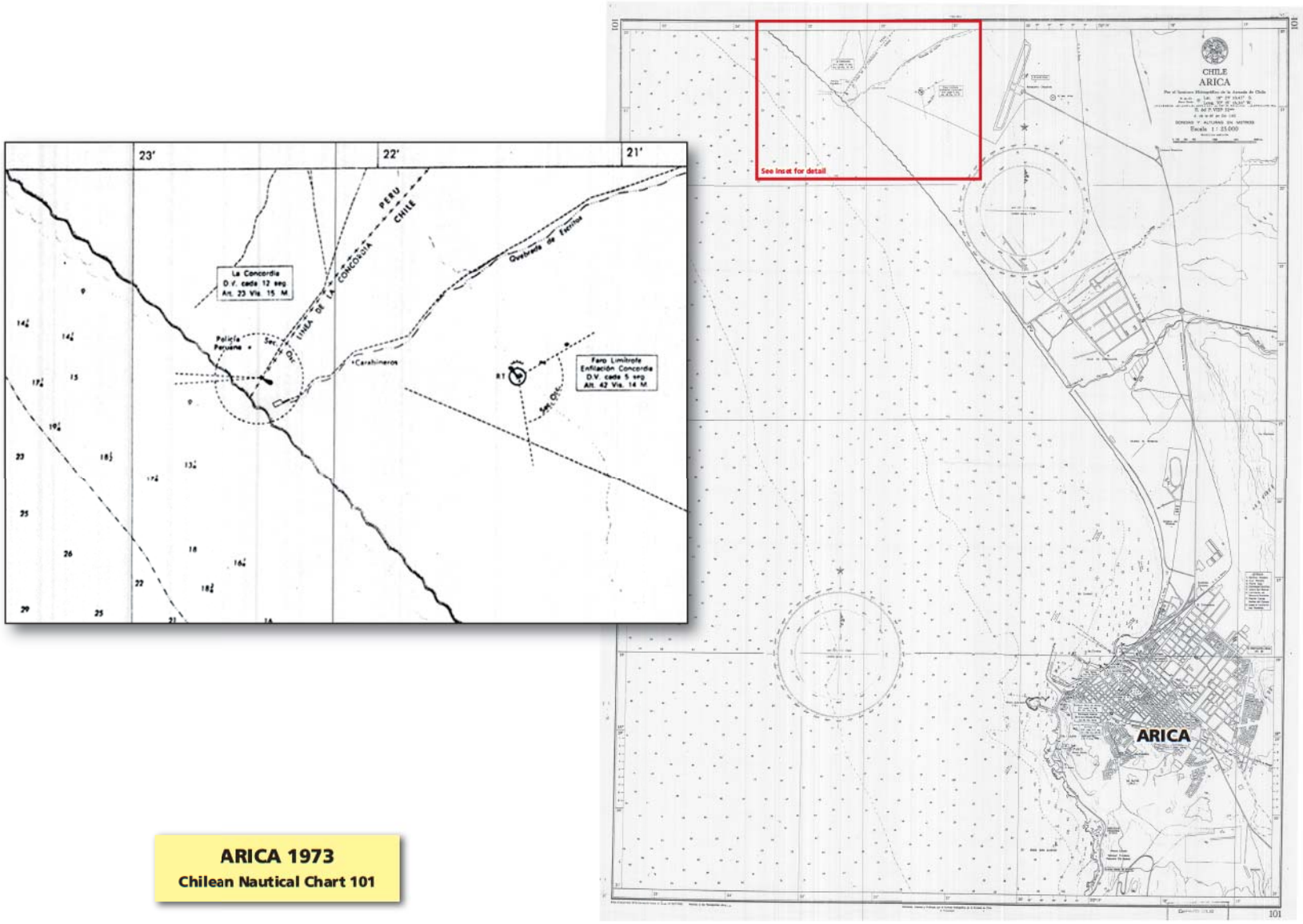
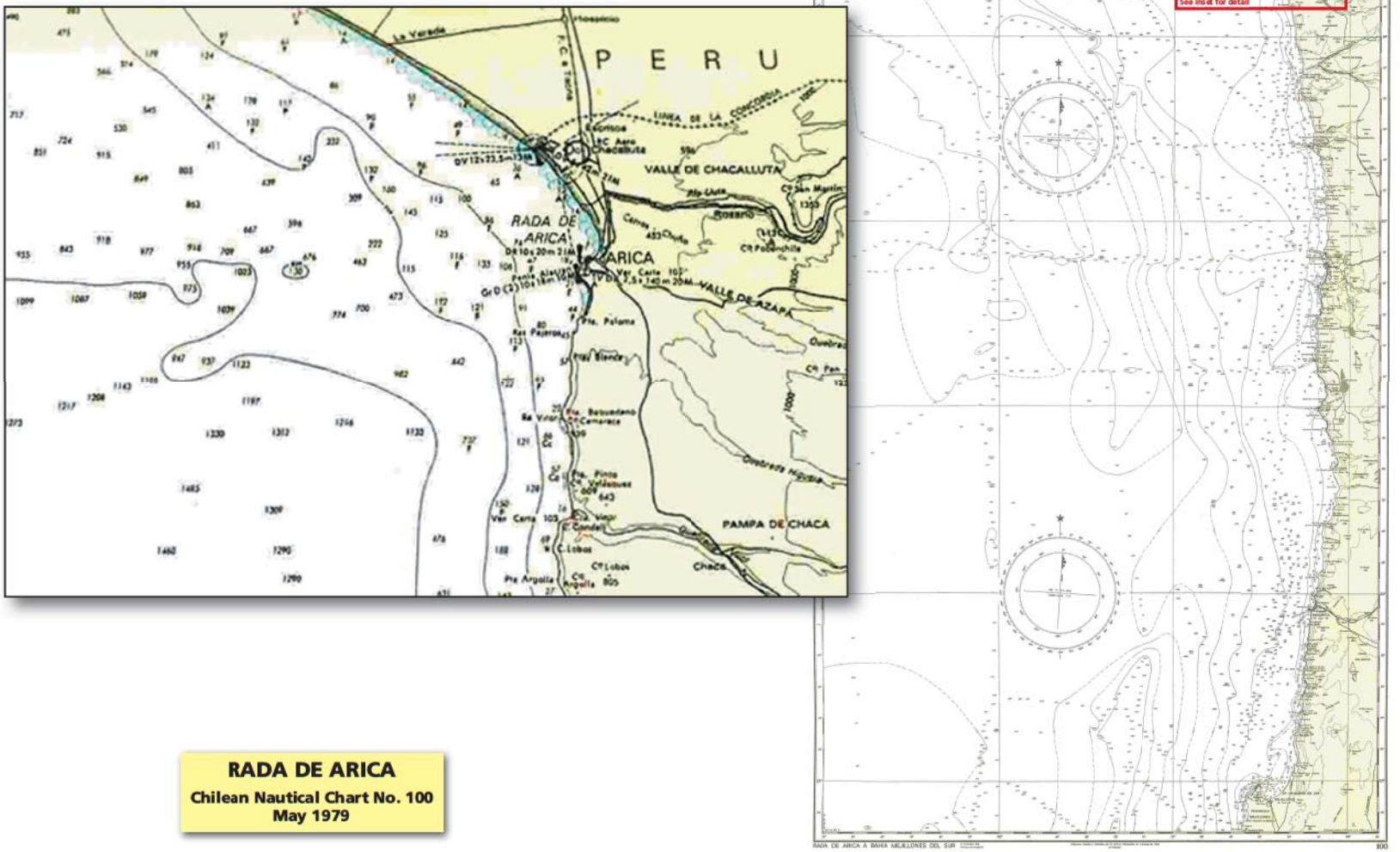
[284] See para. 5.11 above.



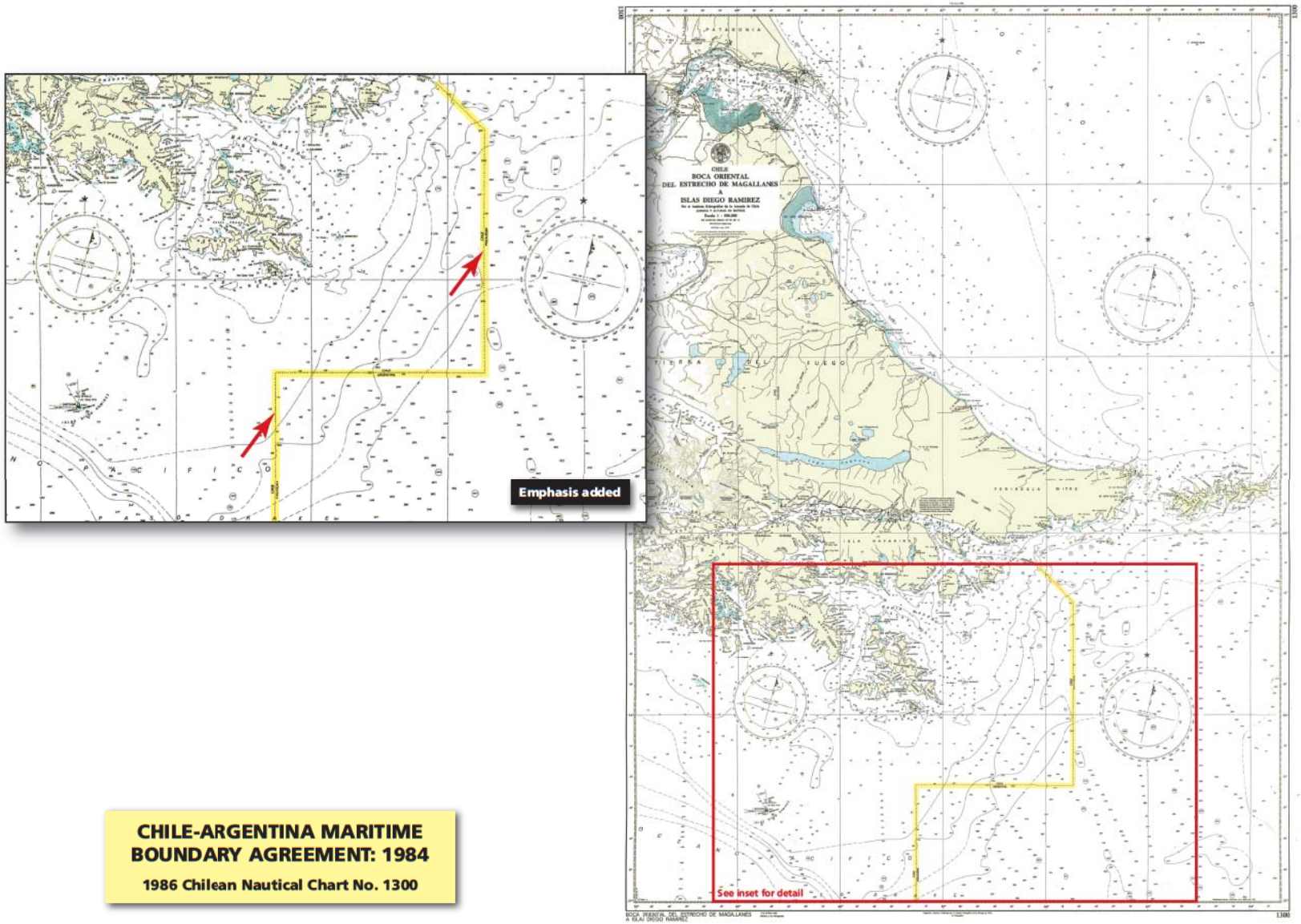
ARICA 1973
Chilean Nautical Chart 101

Figure 5.19



RADA DE ARICA
Chilean Nautical Chart No. 100
May 1979

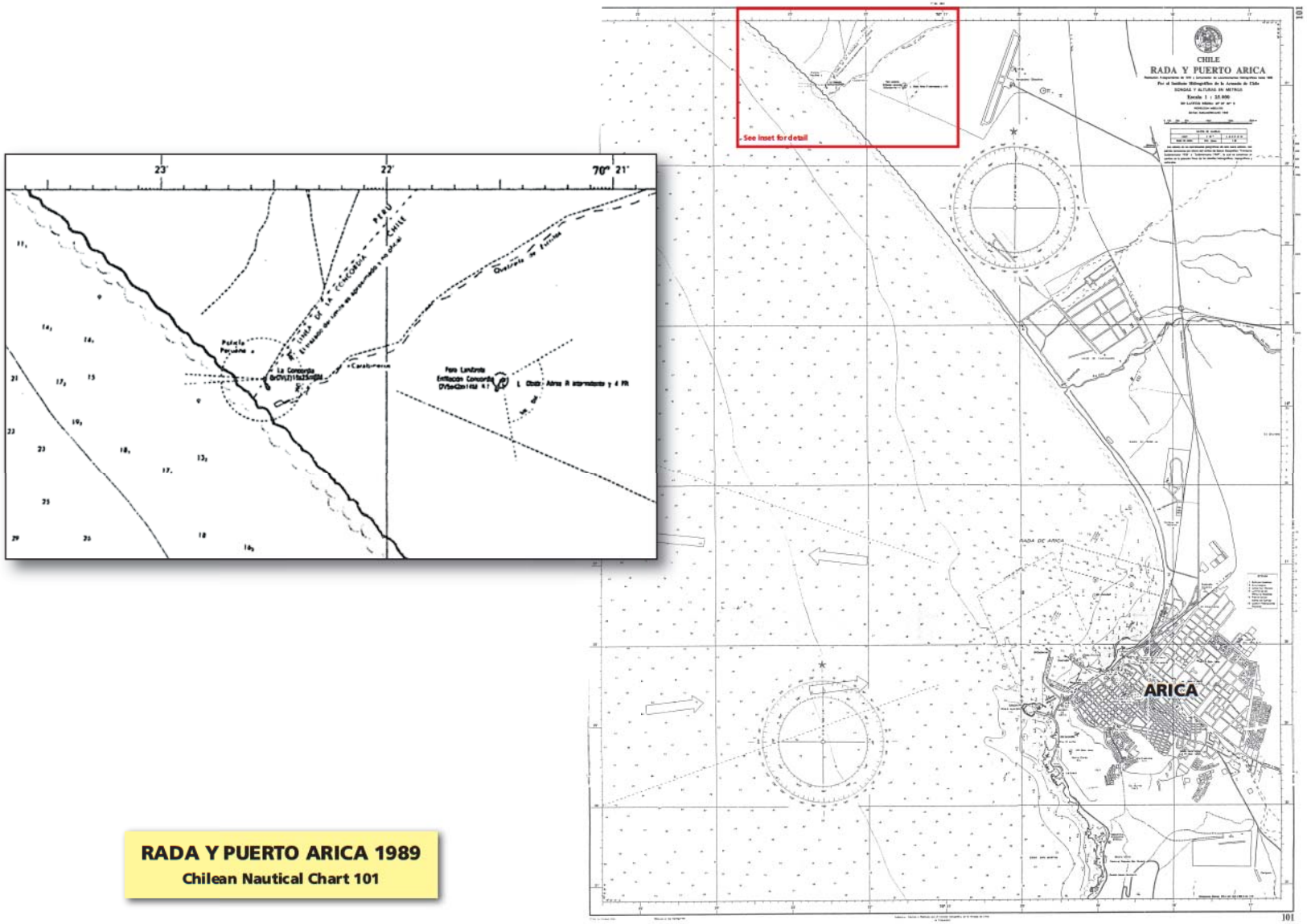
Figure 5.20



CHILE-ARGENTINA MARITIME BOUNDARY AGREEMENT: 1984

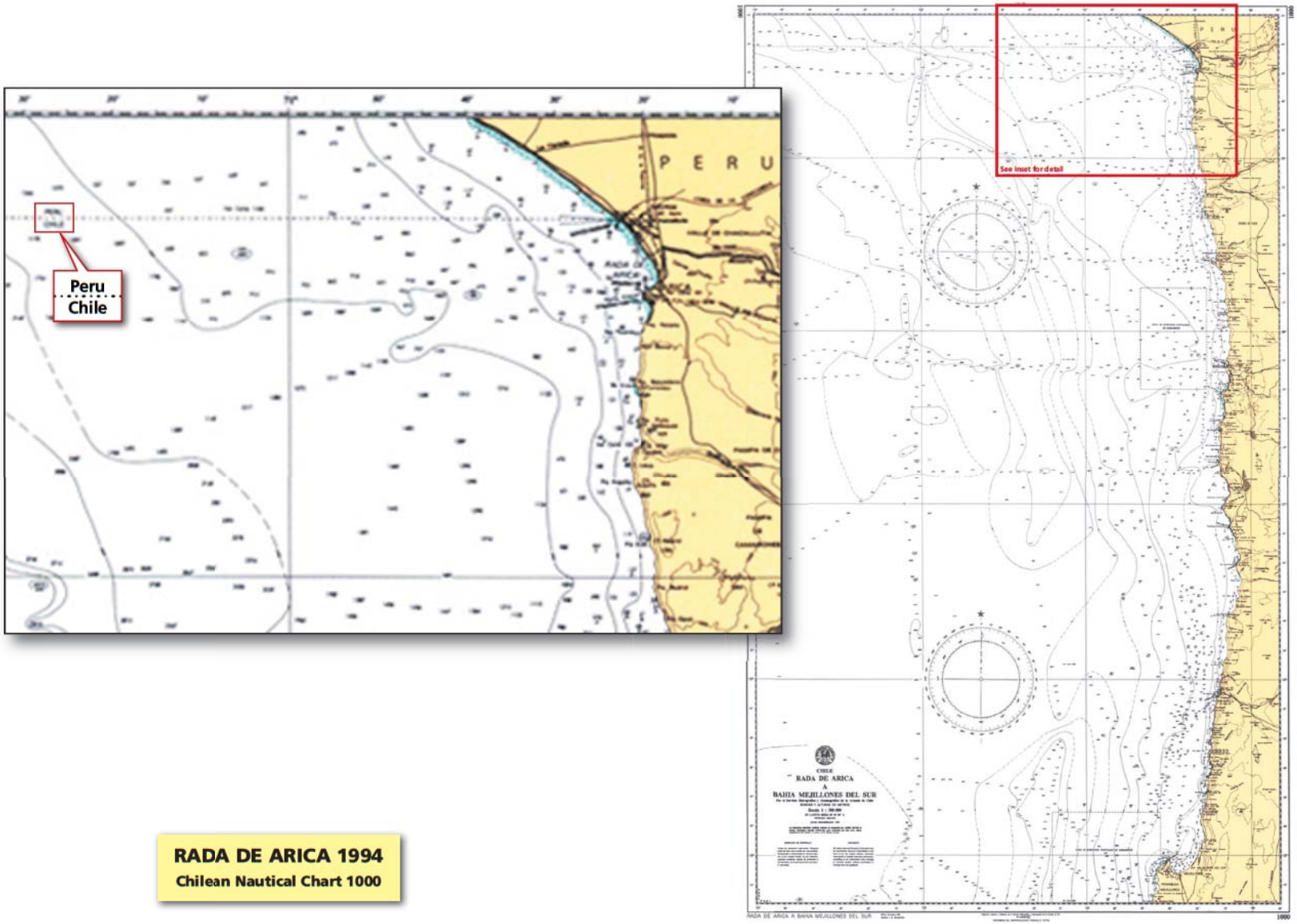
1986 Chilean Nautical Chart No. 1300

Figure 5.22



RADA Y PUERTO ARICA 1989
Chilean Nautical Chart 101

Figure 5.23



RADA DE ARICA 1994
Chilean Nautical Chart 1000

Figure 5.24

5.27 In 1998, Chile made a similar change to its Chart of the Port of Arica area (Chart No. 1111, which was a new edition of the former Chart 101). This can be seen on **Figure 5.25** in Volume IV, the enlargement of which shows for the first time on this series of Chilean charts a dashed line extending out to sea from the land boundary. As noted in Chapter IV, Peru protested the issuance of this Chart and the "boundary line" that appeared on it[285].

5.28 Moreover, the depiction of the initial segment of the land boundary was also changed from what had previously been shown on the 1973 edition of the Chart. Whereas previous editions of the chart showed the land boundary as extending along an arc to a point where it meets the sea to the south of the first boundary marker on land, the 1998 edition suppressed this extension and drew the land boundary as if it met the sea along a parallel of latitude passing through the Boundary Marker No. 1. This change in Chile's cartography was in contravention to the provisions of the 1929 Treaty of Lima discussed in Chapter I[286], and inconsistent with Chile's earlier mapping.

5.29 Later editions of Chile's maps also began to reflect this unilateral change of position. For example, in 2005 the *National Atlas of Chile* evidenced the change in Chile's position by showing a "Limit Chile-Peru" extending to sea from what Chile labelled "Hito", or Marker, No. 1.[287] Earlier editions of the Chilean *National Atlas* had not depicted such a line.

5.30 From the above, it can be seen that Chile's official maps up to 1992 did not show any maritime boundary existing between itself and Peru. It was only in 1992 that Chile's cartography began to change by showing what appeared to be an international boundary out to sea. However, nothing happened in 1992 or thereafter between the Parties to change the situation justifying this shift in Chile's official mapping. The Parties agreed no maritime boundary at that time, and they had not done so before, as Chile's own maps consistently demonstrated.

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[285] See para. 4.136 above.

[286] See paras. 1.32 *ff.* above.

[287] See **Figure 5.26** in Vol. IV.

5.31 The absence of any indication of a maritime boundary on Chile's official maps over a long period of time carries with it legal consequences to the extent that Chile maintains that there is a pre-existing maritime delimitation between the Parties dating from the 1950s. As the Court of Arbitration stated in its Award in the *Beagle Channel Arbitration*:

> "Equally, maps published after the conclusion of the Treaty can throw light on what the intentions of the Parties in respect of it were, and, in general, on how it should be interpreted. But the particular value of such maps lies rather in the evidence they may afford as to the view which one or the other Party took at the time, or subsequently, concerning the settlement resulting from the Treaty, and the degree to which the view now being asserted by that Party as the correct one is consistent with that which it appears formerly to have entertained."[288]

In the same vein the Court of Arbitration in its Award in the *Beagle Channel* noted that –

> "the cumulative impact of a large number of maps, relevant for the particular case, that tell the same story – especially where some of them emanate from the opposing Party, or from third countries – cannot but be considerable, either as indications of general or at least widespread repute or belief, or else as confirmatory of conclusions reached, … independently of the maps."[289]

5.32 In the light of these considerations, the map evidence confirms what is apparent from the text of the 1952 and 1954 instruments and from the subsequent conduct of the Parties. While the Parties did enter into provisional arrangements of a practical nature to avoid incidents involving small fishing boats, they never concluded a formal delimitation agreement. The Court's task in the present case is now to delimit the maritime zones between the Parties.

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[288] *Beagle Channel Arbitration between* the Republic of Argentina and the Republic of Chile, Report and Decision of the Court of Arbitration, 18 February 1977, reprinted in 52 ILR at p. 202, para. 137.

[289] *Ibid.*, p. 204, para. 139.

CHAPTER VI

THE PRINCIPLES AND RULES OF INTERNATIONAL LAW GOVERNING MARITIME DELIMITATION AND THEIR APPLICATION IN THIS CASE

I. Introduction

6.1 In this chapter, Peru will review the principles and rules of international law relevant to maritime delimitation and their application to the geographical and other circumstances of the present case in order to achieve an equitable result. Section II starts by examining the "equitable principles/relevant circumstances" rule, also referred to as the "equidistance/special circumstances" rule. As the Court has repeatedly held, this rule constitutes the basic rule of maritime delimitation in the absence of an agreed boundary between Parties to a delimitation dispute. In Section III, Peru will then identify the relevant coasts of the Parties for delimitation purposes and the relevant area within which the "equidistance/special circumstances" rule falls to be applied. Closely related to the question of the relevant coasts and the relevant area is the question of the starting-point for the delimitation where the land boundary between the Parties meets the sea. Section IV addresses this point and shows the manner in which that point was agreed in 1929-1930.

6.2 Based on these factors, Section V will then turn to the construction of the provisional equidistance line which, under the Court's jurisprudence, represents the first step in the delimitation process. In Section VI, Peru will show that there are no special or relevant circumstances characterizing the area to be delimited calling for the adjustment of that line, and that an equidistance line results in an equal division of the areas appertaining to the Parties without producing any "cut-off" effect or undue encroachment. Finally, in Section VII

Peru will demonstrate that a delimitation based on the application of the equidistance method satisfies the test of proportionality and achieves an equitable result based on the facts of the case.

II. The Principles and Rules of Maritime Delimitation

6.3 One constant theme on which the law of maritime delimitation has always been grounded is that delimitation is to be carried out in accordance with equitable principles in order to achieve an equitable result. This fundamental principle finds its expression not only in the jurisprudence of the Court, but also in Articles 74 and 83 of the Law of the Sea Convention.

6.4 As the Court pointed out in Judgment in the *North Sea Continental Shelf* cases, one of the basic legal notions which has, from the beginning, reflected the *opinio juris* in the matter of maritime delimitation is that –

> "delimitation must be the object of agreement between the States concerned, and that such agreement must be arrived at in accordance with equitable principles."[290]

As the Court went on to observe:

> "On a foundation of very general precepts of justice and good faith, actual rules of law are here involved which govern the delimitation of adjacent continental shelves – that is to say, rules binding upon States for all delimitations; – in short, it is not a question of applying equity simply as a matter of abstract justice, but of applying a rule of law which itself requires the application of equitable principles"[291].

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[290] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 46, para. 85. It is appropriate to point out that the Court emphasized that "agreement" amongst States regarding delimitation must also "be arrived at in accordance with equitable principles." *Idem*. In this respect, the Court noted that Parties are under an obligation "so to conduct themselves that the negotiations are meaningful". *Ibid.*, p. 47, para. 85. It is apparent in this case, as explained in Chap. IV, that no such negotiations ever took place between the Parties regarding their delimitation either in 1952 or 1954, or at any time thereafter.

[291] *Ibid.*, pp. 46-47, para. 85.

6.5 The primacy of equitable principles was further elaborated by the Court in the *Tunisia-Libya* case where the Court stressed the importance of reaching an equitable result. The relevant passage from the Court's Judgment is as follows:

> "The result of the application of equitable principles must be equitable. This terminology, which is generally used, is not entirely satisfactory because it employs the term equitable to characterize both the result to be achieved and the means to be applied to reach this result. It is, however, the result which is predominant; the principles are subordinate to the goal."[292]

6.6 The Court has made it quite clear that a delimitation in accordance with equitable principles is to be distinguished from a decision *ex aequo et bono*, which can only be taken if the Parties agree. As the Court noted, "it is bound to apply equitable principles as part of international law."[293] Stated another way:

> "Equity as a legal concept is a direct emanation of the idea of justice. The Court whose task is by definition to administer justice is bound to apply it."[294]

6.7 This approach to maritime delimitation is aptly summarized in Articles 74 and 83 of the 1982 Convention on the Law of the Sea, each of which contains a provision to the effect that:

> "The delimitation of [the exclusive economic zone or continental shelf] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."[295]

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[292] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 59, para. 70.

[293] *Ibid.*, p. 60, para. 71.

[294] *Ibid.*

[295] Article 74 ("Delimitation of the exclusive economic zones between States with opposite or adjacent coasts") and Article 83 ("Delimitation of the continental shelf between States with opposite or adjacent coasts") of the 1982 Convention on the Law of the Sea.

6.8 At the same time, the Court has also recognized the need for consistency and predictability with respect to issues of maritime delimitation. For example, in the *Libya-Malta* case, the Court stated the following:

> "Thus the justice of which equity is an emanation, is not abstract justice but justice according to the rule of law; which is to say that its application should display consistency and a degree of predictability; even though it looks with particularity to the peculiar circumstances of an instant case, it also looks beyond it to principles of more general application."[296]

6.9 The Court's recent jurisprudence makes it clear that the "equidistance/special circumstances" rule accommodates the dual purpose of applying equitable principles so as to achieve an equitable result, on the one hand, and of importing a degree of consistency and predictability to maritime delimitation more generally, on the other.

6.10 Application of this rule is now well established in practice and involves essentially a two-step process: *first*, a provisional equidistance line is drawn between the relevant basepoints on the Parties' coasts from which the breadth of their territorial sea or maritime zones is measured; *second*, consideration is then given as to whether there are any "special" or "relevant" circumstances calling for the adjustment of the provisional line in order to achieve an equitable result. In certain cases, particularly where the relevant area within which the delimitation is to take place is readily identifiable as is the case between Peru and Chile, the resulting line can then be tested against the criterion of proportionality as a final check to determine whether the line arrived in application of the two initial steps produces a result which is not unduly disproportionate.

6.11 In earlier cases involving maritime delimitation between States with opposite coasts, such as the *Libya-Malta* and *Denmark-Norway* cases, the Court

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[296] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 39, para. 45.

proceeded on the basis that the first step in the delimitation process entailed the adoption of a provisional equidistance, or median, line followed by a second step in which the provisional line was adjusted, as necessary, to reflect the relevant circumstances characterizing the delimitation area. More recently, this approach has been extended to delimitations involving adjacent, and quasi-adjacent, coasts.

6.12 In the *Qatar/Bahrain* case, for example, the Court had occasion to refer back to the approach it adopted in *Libya-Malta*. As the Court indicated:

> "The Court will follow the same approach in the present case. For the delimitation of the maritime zones beyond the 12-mile zone it will first provisionally draw an equidistance line and then consider whether there are circumstances which must lead to an adjustment of that line."[297]

The Court then expanded on its reasoning in the following way:

> "The Court further notes that the equidistance/special circumstances rule, which is applicable in particular to the delimitation of the territorial sea, and the equitable principles/ relevant circumstances rule, as it has been developed since 1958 in case-law and State practice with regard to the delimitation of the continental shelf and the exclusive economic zone, are closely interrelated."[298]

6.13 The same approach was used in the *Cameroon-Nigeria* case – a case involving delimitation between States with adjacent coasts, as is the situation between Peru and Chile. The relevant passage from the Court's judgment explaining the methodology employed reads as follows:

> "The Court has on various occasions made it clear what the applicable criteria, principles and rules of delimitation are

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[297] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment, I.C.J. Reports 2001*, p. 111, para. 230.

[298] *Ibid.*, para. 231.

> when a line covering several zones of coincident jurisdictions is to be determined. They are expressed in the so-called equitable principles/relevant circumstances method. 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'."[299]

6.14 Recent arbitral practice has followed the Court's approach. In the *Barbados-Trinidad and Tobago* arbitration, for example, the reasoning of the Arbitral Tribunal closely mirrored the methodology that the Court articulated in *Qatar-Bahrain* and *Cameroon-Nigeria*. As the Arbitral Tribunal stated in its Award:

> "The determination of the line of delimitation thus normally follows a two-step approach. First, a provisional line of equidistance is posited as a hypothesis and a practical starting point. While a convenient starting point, equidistance alone will in many circumstances not ensure an equitable result in the light of the peculiarities of each specific case. The second step accordingly requires the examination of this provisional line in the light of relevant circumstances, which are case specific, so as to determine whether it is necessary to adjust the provisional equidistance line in order to achieve an equitable result ... This approach is usually referred to as the 'equidistance/ relevant circumstances' principle."[300]

6.15 Similar support for the primary role of the "equidistance/special circumstances" rule may be found in the award in the *Guyana-Suriname* arbitration, another

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[299] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 441, para. 288. For a recent limpid exposition of the "Delimitation methodology", see: *Case Concerning Maritime Delimitation in the Black Sea, I.C.J. Judgment of 3 February 2009*, paras. 115-122.

[300] Award *In the Matter of an Arbitration between Barbados and the Republic of Trinidad and Tobago, 11 April 2006*, para. 242.

case involving delimitation between States with adjacent coasts. In the words of the Arbitral Tribunal:

> "The case law of the International Court of Justice and arbitral jurisprudence as well as State practice are at one in holding that the delimitation process should, in appropriate cases, begin by positing a provisional equidistance line which may be adjusted in light of relevant circumstances in order to achieve an equitable solution."[301]

6.16 It is true that there may be situations where the coastal geography of the Parties does not permit, for practical reasons, the construction of an equidistance line as the first step in the delimitation process. The *Nicaragua-Honduras* case is one such example. There, the Court concluded that, due to the unstable nature of the basepoints from which an equidistance line would ordinarily be drawn, application of the equidistance method was impractical. Instead, the Court employed a bisector method between the coastal fronts of the Parties. In so doing, however, the Court was careful to note that, "[a]t the same time equidistance remains the general rule."[302] The Court also observed that the bisector method can be used in appropriate situations to give legal effect to the criterion that "one should aim at an equal division of areas where the maritime projections of the coasts of the States … converge and overlap."[303]

6.17 While there are no special circumstances in the present case that render it impractical to employ the equidistance method as the first step in the delimitation exercise, as there were in the *Nicaragua-Honduras*, it is nonetheless worth noting that application of the bisector method between the relevant coastal fronts of Peru and Chile would produce virtually the same result as the equidistance method, as will be seen in Section V below.

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[301] Award *In the Matter of an Arbitration between Guyana and Suriname, 17 September 2007*, para. 342.

[302] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), I.C.J. Judgment of 8 October 2007*, p. 77, para. 281.

[303] *Ibid.*, p. 78, para. 287, quoting *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 327, para. 195.

6.18 In the light of these precedents, it is now well established that the first step in the delimitation process is to construct a provisional equidistance line between the relevant basepoints on the Parties' coasts, and that the second step then involves assessing whether there are any geographical or other relevant circumstances justifying an adjustment of the provisional line in order to achieve an equitable result. This is the approach that Peru has adopted in the present case in conformity with the principles and rules of international law.

III. The Relevant Coasts of the Parties and the Relevant Area

6.19 Having set out the principles and rules of law applicable to the maritime delimitation between Peru and Chile, it is appropriate to examine the geographical setting within which these rules fall to be applied. This involves an analysis of two related concepts: *(a)* the relevant coasts of the Parties for delimitation purposes and *(b)* the relevant area.

A. The Relevant Coasts

6.20 It is evident that it is not the entire coast of each of the Parties that is relevant to delimitation, but only those portions of the coast which, because of their relationship of adjacency, generate overlapping legal entitlements to maritime zones. In other words, the delimitation to be effected in the present case is between the legal entitlements generated by the coasts of Parties which, by virtue of being adjacent to each other, meet and overlap. As the Court observed in the *Tunisia-Libya* case, another case involving delimitation between adjacent States with a common land boundary:

> "Nevertheless, for the purpose of shelf delimitation between the Parties, it is not the whole of the coast of each Party which can be taken into account; the submarine extension of any part of the coast of one Party which, because of its geographic situation, cannot overlap with the extension of

> the coast of the other, is to be excluded from further consideration by the Court."[304]

6.21 Because of their relationship of adjacency, the relevant coasts of the Parties for delimitation purposes are initially defined by an aspect of political geography – namely, the starting-point on the land boundary between the two States. As has been noted in Chapter II, and will be discussed in more detail in Section IV below, the starting-point on the land boundary where it meets the sea is located at Point Concordia, the co-ordinates of which are 18°21'08" S, 70°22'39" W WGS84.

6.22 **Figure 6.1** shows that the starting-point on the land boundary between Peru and Chile lies almost exactly at the point where the configuration of the Pacific coast of South America as a whole changes direction. The Peruvian coast north of the land boundary runs in a southeast-northwest direction, while the configuration of the Chilean coast south of the land boundary is almost due north-south.

6.23 Offshore, there is only a narrow band of sea-bed having depths of 200 metres or less. Thereafter, as noted in Chapter II, the ocean floor plunges rapidly due to the existence of a plate boundary that runs along the west coast of South America. This can be seen from the bathymetric contours on **Figure 6.1**.

6.24 As for the coasts themselves, while there are some gentle undulations along both Parties' coastal fronts, there are no significant promontories, islands or low-tide elevations in the vicinity of the land boundary or within 200 nautical miles of it on either side.

6.25 As can be seen on **Figure 6.1**, the Peruvian coast extends from Point Concordia in a northwest direction corresponding more or less to a straight coastal

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[304] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 75.

front as far as the city of Ilo. At this point, there is a slight concavity in Peru's coast north of Ilo, but the coast then reassumes its southeast to northwest direction up to Punta Pescadores, which lies between the towns of Ocoña and Atico. The latter is situated close to the 74° W meridian just over 200 nautical miles from the starting-point on the land boundary.

6.26 On the Chilean side, Chile's coast extends for a very short distance south of Point Concordia (less than 10 miles) in a northwest-southeast direction down to the coastal city of Arica. At that point, the coast of Chile adopts an almost due north-south configuration to Tocopilla, which lies just south of the 22° S parallel of latitude, and beyond.

6.27 As a glance at the map reveals, the coastal geography in this area is unremarkable and presents no distorting characteristics. It follows that there are no geographical features that distinctly stand out as limiting the extent of the relevant coasts of the Parties as there were, for example, in the *Tunisia/Libya* case where Ras Kaboudia on the Tunisian coast and Ras Tajoura on the Libyan coast represented the clear limits of the Parties' relevant coasts.

In its recent Judgment of 3 February 2009, the Court recalled that –

> "the coast, in order to be considered as relevant for the purpose of the delimitation, must generate projections which overlap with projections from the coast of the other party. Consequently 'the submarine extension of any part of the coast of one Party which, because of its geographic situation, cannot overlap with the extension of the coast of the other, is to be excluded from further consideration by the Court' (*Continental Shelf (Tunisia/ Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 75)."[305]

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[305] *Case Concerning Maritime Delimitation in the Black Sea, I.C.J. Judgment of 3 February 2009*, para. 99.


BATHYMETRY OF THE RELEVANT AREA
Legend:
Bathymetric depths
(in meters)
0 - 200 m
200 - 1000 m
1000 - 2000 m
2000 - 3000 m
3000 - 4000 m
4000 - 5000 m
5000 - 6000 m
6000 - 7000 m
Over 7000 m
Mercator Projection
Datum: WGS-84
(Scale accurate at 18°S)
0 50 100 150
Nautical Miles
0 100 200 300
Kilometers
Coastal configuration based on Peruvian nautical charts 200 & 300, and Chilean nautical charts 1000 & 2000.
Prepared by: International Mapping
PERU
CHILE
BOLIVIA
ARGENTINA
PACIFIC OCEAN
NAZCA RIDGE
PERU CHILE TRENCH
Pisco
Paracas
Nazca
San Nicolás
San Juan
Tanaca
Atico
Ocoña
Camaná
Quilca
Arequipa
Mollendo
Moquegua
Ilo
Tacna
Boca del Rio
Point Concordia
Arica
Chaca
Cuya
Pisagua
Iquique
Tocopilla
Peninsula Mejillones
Antofagasta
80°W
78°W
76°W
74°W
72°W
70°W
68°W
66°W
14°S
16°S
18°S
20°S
22°S

Figure 6.1

6.28 In these circumstances, it is logical to identify the relevant coasts of the Parties that give rise to overlapping maritime entitlements by reference to their distance from Point Concordia – the starting-point on the land boundary. **Figure 6.2** indicates the segments of each Party's coast that lie within 200 nautical miles of the land boundary starting-point. On the Peruvian side, the relevant coast extends up to a point on the coast mentioned above called Punta Pescadores, which lies a short distance to the southeast of Atico. On the Chilean side, the relevant coast may be viewed as extending down to Punta Arenas, which is virtually the same distance south of the land boundary that Punta Pescadores is to the northwest. It is these stretches of coast which, because of their adjacent relationship, generate maritime entitlements which meet and overlap and thus give rise to the need for delimitation. For practical purposes, they may be considered to constitute the relevant coasts in this case.

B. The Relevant Area

6.29 Taking the relevant coasts of the Parties as described above, it is possible to identify the area within which the delimitation is to take place by reference to the entitlements generated by those coasts. As the Court observed in its recent Judgment in the *Black Sea* case – "the legal concept of the 'relevant area' has to be taken into account as part of the methodology of maritime delimitation"[306]. **Figure 6.3** depicts 200-mile arcs drawn from the initial point of the land boundary which define the seaward extent of each Party's potential maritime entitlements in this area.

6.30 In addition to the starting-point on the land boundary, the two other points that circumscribe the limits of each Party's entitlements are, *first*, the minor projection on Peru's coast at Punta Pescadores which is some 200 nautical miles from the land boundary, and *second*, the point on Chile's coast located at Punta Arenas which is also about 200 miles from the land boundary starting-point.

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[306] *Case Concerning Maritime Delimitation in the Black Sea, I.C.J. Judgment of 3 February 2009*, para. 110.

6.31 The resulting area of overlapping legal entitlements is depicted on **Figure 6.3**. It is within this area that the delimitation falls to be effected and with respect to which the Parties' claims may be assessed by reference to the test of proportionality[307]. The relevant area is thus circumscribed by 200-mile arcs extending from the point where the land boundary meets the sea and encompassing equivalent stretches of coast appertaining to the Parties on each side of the land boundary. As will be seen in subsequent Sections of this chapter, in the geographical circumstances of the case, delimitation of the overlapping maritime zones of the Parties on the basis of the equidistance method produces an equal division of the area, and an equitable result, due to the straightforward nature of the coastal geography.

IV. The Starting-Point for the Delimitation

6.32 At this stage, it is necessary to consider the land boundary between the two Parties because that determines the location of the starting-point of the maritime boundaries between them. As pointed out in Chapter II, within the relevant area, both Parties' baselines are "normal" baselines constituted by the low-water mark on the coast. It follows that the starting-point of the land boundary where it meets the sea is situated at the low-water mark[308].

6.33 As has been noted[309], Peru and Chile did not share a land boundary when they achieved independence. As a result of the war declared in 1879 by Chile against Bolivia and Peru – the War of the Pacific – land boundaries changed dramatically. Bolivia lost its rich province of Antofagasta and consequently its presence on the Pacific coast, and in the Treaty of Ancón (1883), Peru ceded to Chile its large province of Tarapacá and agreed that Chile would occupy the southern provinces of Tacna and Arica for 10 years, after which a plebiscite would be held to determine their future. The plebiscite was never held.

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[307] The application of the test of proportionality to the Parties' claims is discussed in Section VII of this chapter, below.

[308] See paras. 2.14, 2.21 above. Moreover, as noted in paras. 4.15, 4.16, 4.19 above, it was the historical practice of the Parties to measure the outer limit of their maritime zones by reference to the low-water mark.

[309] Para. 1.4 above. See also **Figure 1.2**.

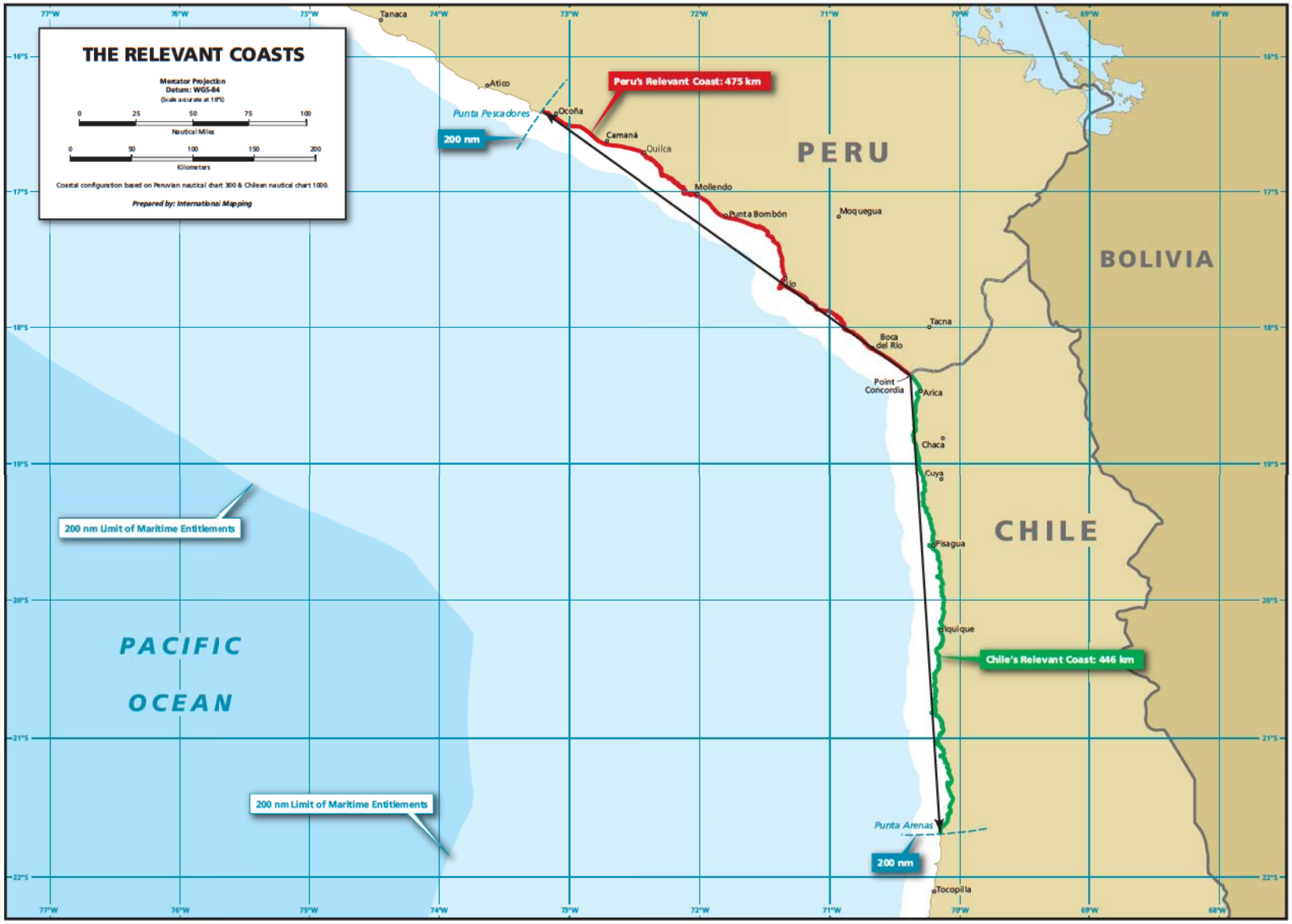
THE RELEVANT COASTS
Mercator Projection
Datum: WGS-84
(Scale accurate at 18°S)
0 25 50 75 100
Nautical Miles
0 50 100 150 200
Kilometers
Coastal configuration based on Peruvian nautical chart 300 & Chilean nautical chart 1000.
Prepared by: International Mapping
Peru's Relevant Coast: 475 km
Chile's Relevant Coast: 446 km
200 nm
200 nm
Punta Pescadores
Punta Arenas
200 nm Limit of Maritime Entitlements
200 nm Limit of Maritime Entitlements
PERU
BOLIVIA
CHILE
PACIFIC
OCEAN
Tanaca
Atico
Ocoña
Camaná
Quilca
Mollendo
Punta Bombón
Moquegua
Ilo
Tacna
Boca del Rio
Point Concordia
Arica
Chaca
Cuya
Pisagua
Iquique
Tocopilla
77°W
76°W
75°W
74°W
73°W
72°W
71°W
70°W
69°W
68°W
16°S
17°S
18°S
19°S
20°S
21°S
22°S

Figure 6.2

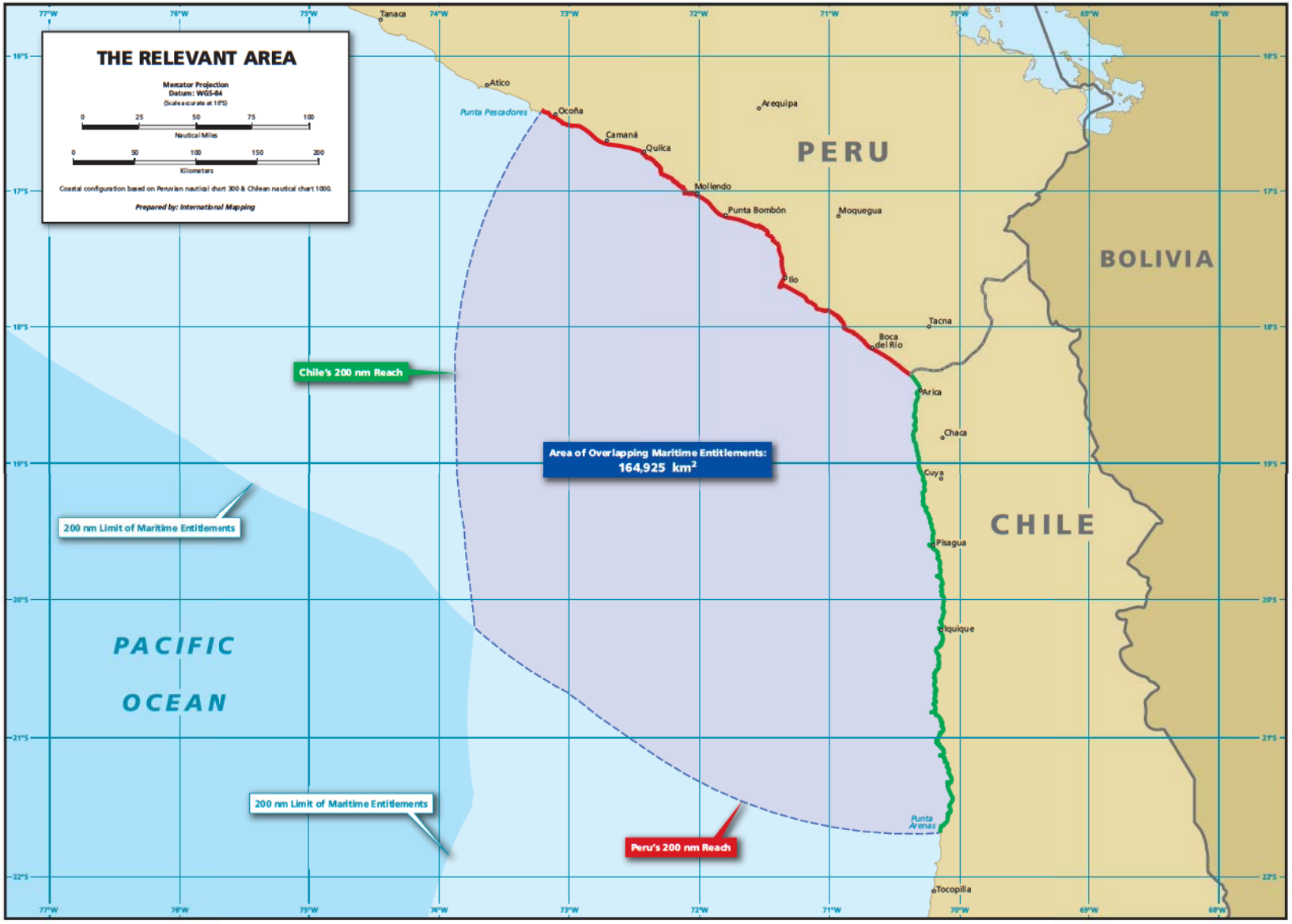
THE RELEVANT AREA
Mercator Projection
Datum: WGS-84
(Scale accurate at 18°S)
0 25 50 75 100
Nautical Miles
0 50 100 150 200
Kilometers
Coastal configuration based on Peruvian nautical chart 300 & Chilean nautical chart 1000.
Prepared by: International Mapping
Tanaca
Atico
Punta Pescadores
Ocoña
Camaná
Quilca
Arequipa
PERU
Mollendo
Punta Bombón
Moquegua
Ilo
BOLIVIA
Tacna
Boca del Rio
Chile's 200 nm Reach
Arica
Chaca
Area of Overlapping Maritime Entitlements:
164,925 km²
Cuya
200 nm Limit of Maritime Entitlements
CHILE
Pisagua
Iquique
PACIFIC
OCEAN
200 nm Limit of Maritime Entitlements
Punta Arenas
Peru's 200 nm Reach
Tocopilla
77°W
76°W
75°W
74°W
73°W
72°W
71°W
70°W
69°W
68°W
16°S
17°S
18°S
19°S
20°S
21°S
22°S

Figure 6.3

6.34 Chile and Peru subsequently reached agreement on territorial questions concerning Tacna and Arica, in the 1929 Treaty of Lima.

6.35 Under Article 2 of the 1929 Treaty of Lima[310], Tacna was given back to Peru and Arica was ceded to Chile. Article 2 reads as follows:

> "The territory of Tacna and Arica shall be divided into two portions of which Tacna, shall be allotted to Peru and Arica to Chile. The dividing line between the two portions, and consequently the frontier between the territories of Chile and Peru, shall start from a point on the coast to be named 'Concordia', ten kilometres to the north of the bridge over the river Lluta. It shall continue eastwards parallel to the line of the Chilean section of the Arica La Paz railway and at a distance of ten kilometres therefrom, with such sinuosities as may be necessary to allow the local topography to be used, in the demarcation, in such a way that the sulphur mines of the Tacora and their dependencies shall remain within Chilean territory. The line shall then pass through the centre of the Laguna Blanca, so that one portion thereof shall be in Chile and the other in Peru."

Spanish text reads as follows:

> "El territorio de Tacna y Arica será dividido en dos partes, Tacna para el Perú y Arica para Chile. La línea divisoria entre dichas dos partes y, en consecuencia, la frontera entre los territorios del Perú y de Chile, partirá de un punto de la costa que se denominará 'Concordia', distante diez kilómetros al Norte del puente del Río Lluta, para seguir hácia el Oriente paralela a la vía de la sección chilena del Ferrocarril de Arica a La Paz y distante diez kilómetros de ella, con las inflexiones necesarias para utilizar, en la demarcación, los accidentes geográficos cercanos que permitan dejar en territorio chileno las azufreras del Tacora y sus dependencias, pasando luego por el centro de la Laguna Blanca, en forma que una de sus partes quede en el Perú y la otra en Chile."

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[310] Annex 45.

6.36 Article 3 of the Treaty of Lima then stipulated that:

> "The frontier-line referred to in the first paragraph of Article 2 shall be determined and marked by means of posts in the territory itself by a Mixed Commission consisting of one member appointed by each of the signatory Governments."

Spanish text reads as follows:

> "La línea fronteriza, a que se refiere el inciso primero del artículo segundo, será fijada y señalada en el territorio con hitos, por una comisión mixta compuesta de un miembro designado por cada uno de los Gobiernos signatarios".

6.37 There was, however, a dispute within the Commission regarding the exact location of Point Concordia, the starting-point on the coast of the land border. The dispute was solved by the Ministers of Foreign Affairs of the two countries by agreeing that Point Concordia was the intersection between the land boundary and the sea and identical instructions conveying the agreement were sent to both delegations on the ground in April 1930.

6.38 Thus, on 24 April 1930, Peru instructed its delegate as follows:

> "Concordia Boundary Marker.- Starting Point, on the coast, of the borderline.-
> To fix this point:
> Ten kilometres shall be measured from the first bridge of the Arica-La Paz railway, over the River Lluta, running northwards, at Pampa de Escritos, and an arc with a radius of ten kilometres shall be traced westwards, its centre being the aforementioned bridge, running to intercept the seashore, so that any point of the arc measures a distance of 10 kilometres from the referred bridge of the Arica-La Paz railway line over the River Lluta. This intersection point of the traced arc with the seashore, shall be the starting-point of the dividing line between Peru and Chile.

> A boundary marker shall be placed at any point of the arc, as close to the sea as allows preventing it from being destroyed by the ocean waters."[311]

Spanish text reads as follows:

> "Hito Concordia.- Punto Inicial, en la costa, de la línea fronteriza.-
> Para fijar este punto:
> Se medirán diez kilómetros desde el primer puente del ferrocarril de Arica a La Paz sobre el río Lluta, en dirección hacia el Norte, en la Pampa de Escritos, y se trazará, hacia el poniente, un arco de diez kilómetros de radio, cuyo centro estará en el indicado puente y que vaya a intersectar la orilla del mar, de modo que, cualquier punto del arco, diste 10 kilómetros del referido puente del ferrocarril de Arica a La Paz sobre el río Lluta. Este punto de intersección del arco trazado con la orilla del mar, será el inicial de la línea divisoria entre el Perú y Chile. Se colocará un hito en cualquier punto del arco, lo más próximo al mar posible, donde quede a cubierto de ser destruído por las aguas del océano."

6.39 On 28 April 1930 Chile issued instructions to its delegate. The corresponding passage in the instructions is identical to that in the Peruvian instructions, except that the border is referred to as "the dividing line between Chile and Peru" instead of "the dividing line between Peru and Chile".

6.40 From the point north of the first bridge of the Arica-La Paz railway, over the River Lluta, the course of the boundary as it approached the sea was agreed to be an uninterrupted arc, centred upon that bridge.

6.41 It will be noted that there was no question of the border approaching the coast along a parallel of latitude or, indeed, along any other straight line. The border approached the sea as an arc, tending southwards. Peru does not contend that there was an intention that the boundary should continue seawards

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[311] Agreement to Determine the Boundary Line and Place the Corresponding Boundary Markers at the Points in Disagreement in the Peruvian-Chilean Limits Demarcation Joint Commission of 24 April 1930 (Identical Instructions Sent to the Delegates). See Annex 87.

in an arc, generating a curved maritime boundary along the 10-kilometre arc **(Figure 6.4).** On the contrary, the sheer implausibility of any such construction demonstrates that there was no intention that the agreed land boundary should simply be extended seawards so as to produce a maritime boundary.

6.42 The Joint Commission of Limits duly demarcated the border. The Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers (1930)[312], dated 21 July 1930 and agreed by the two sides, recorded that the demarcated border starts at a point on the coast located ten kilometres to the north-west of the bridge over the River Lluta. That starting-point is named "Concordia" in Article 2 of the 1929 Treaty of Lima. On the other hand, delegates agreed to name Marker No. 9, located some seven kilometres away from the coast, as "Marker Concordia", as can be seen in the list of markers contained in the Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers (1930) (**Figure 6.5**).

6.43 The first marker of the physical demarcation of the boundary is Boundary Marker No. 1, made of concrete and located as near to the seashore as was possible in order to avoid being washed away by the sea, at latitude 18°21'03" S, and longitude 70°22'56" W[313]. "Marker Concordia" which is Marker No. 9 in the list in the Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers (1930), was located at 18°18'50.5" S, 70°19'56.6" W.

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[312] Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers of 21 July 1930. Annex 54. Although the Final Act does not identify the geographical datum according to which the latitude and longitude of the boundary markers were fixed, it clearly refered to astronomical co-ordinates. Astronomical co-ordinates are obtained through terrestrial observations of the sun, planets, or stars, made by surveyors on the surface of the Earth.

[313] The astronomical calculation of the parallel of latitude of Boundary Marker No. 1 (18°21'03" S) is equivalent to 18°21'00" WGS84. The World Geodetic System (WGS84) is a global, geo-centric reference system in that the center of the WGS84 ellipsoid, as a datum, is intended to be the Earth's center of mass. Given that astronomical co-ordinates are obtained from an individual's terrestrial observations on the Earth's surface, any inaccuracies in taking a co-ordinate reading are unique to that particular observation. Simply stated, observational errors are not necessarily uniform from place to place and therefore astronomical co-ordinates are not uniformly transferable to modern global geodetic reference systems, such as WGS84, by applying the datum transformation parameters for a particular geodetic reference system.

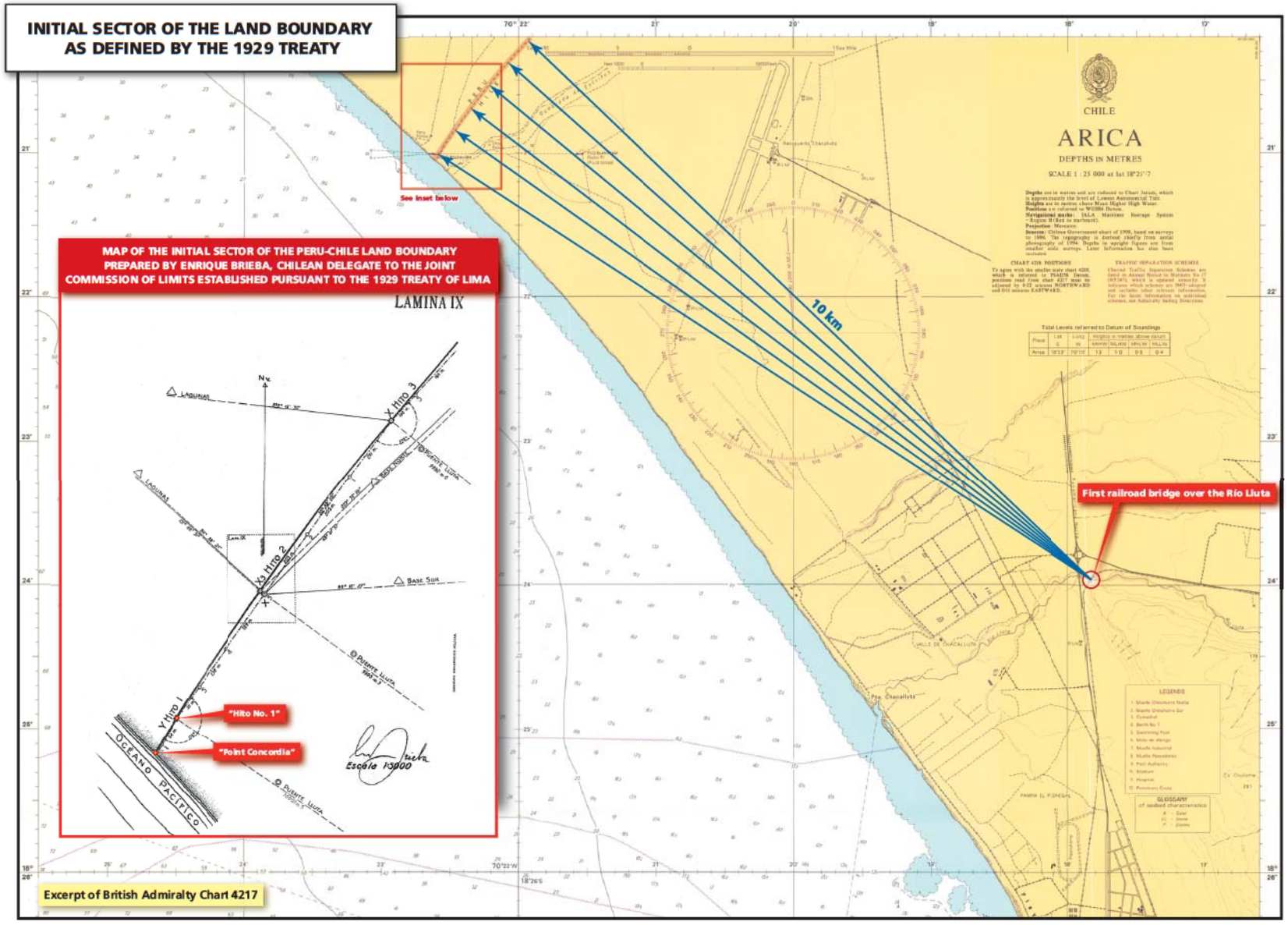
INITIAL SECTOR OF THE LAND BOUNDARY
AS DEFINED BY THE 1929 TREATY
See inset below
CHILE
ARICA
DEPTHS IN METRES
SCALE 1 : 25 000 at lat 18°23'·7
10 km
First railroad bridge over the Río Lluta
MAP OF THE INITIAL SECTOR OF THE PERU-CHILE LAND BOUNDARY
PREPARED BY ENRIQUE BRIEBA, CHILEAN DELEGATE TO THE JOINT
COMMISSION OF LIMITS ESTABLISHED PURSUANT TO THE 1929 TREATY OF LIMA
LAMINA IX
Hito 3
Hito 2
Hito 1
"Hito No. 1"
"Point Concordia"
OCEANO PACIFICO
Escala 1:5000
Excerpt of British Admiralty Chart 4217

Figure 6.4


"POINT CONCORDIA" vs.
"MARKER CONCORDIA"
Mercator Projection
Datum: WGS-84
(Scale accurate at 18°S)
0 10 20 30
Nautical Miles
0 10 20 30 40 50
Kilometers
Coastal configuration based on Peruvian nautical chart 300 & Chilean nautical chart 1000.
Prepared by: International Mapping
71°W
70°W
Tarata
Camiara
PERU
Río Locumba
Tomasiri
Río Sama
Tacna
18°S
Punta Sama
Note: the locations of the land boundary markers described in the 1929 Tacna/Arica Treaty were established bi-laterally using astronomical observations to determine the coordinate positons.
Boca del Río
"Marker Concordia"
(Hito No. 9)
(18°18'50.5"S - 70°19'56.6"W)
"Point Concordia"
(Seaward of Hito No. 1)
(18°21'08"S - 70°22'39"W)
Río Lluta
Note: the location of "Point Concordia" was established using the WGS-84 global reference system.
Arica
PACIFIC
OCEAN
CHILE
Caleta Vitor
Punta Argolla
Chaca
71°W
70°W

Figure 6.5

6.44 The April 1930 instructions to the Joint Commission of Limits had stipulated that:

> "A boundary marker shall be placed at any point of the arc, as close to the sea as allows preventing it from being destroyed by the ocean waters."[314]

Spanish text reads as follows:

> "Se colocará un hito en cualquier punto del arco, lo más próximo al mar posible, donde quede a cubierto de ser destruído por las aguas del océano."

That is precisely what was done. Marker No. 1 was not intended to mark the start of the agreed boundary. Nor was it intended to sit on any particular parallel of latitude. It was intended to mark a point on the arc that constituted the agreed boundary, that point being chosen on the basis of convenience to ensure that the closest marker to the shoreline was not washed away by the sea.

6.45 The actual start of the boundary at the coast was described accordingly in the Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers (1930). There it was recorded that:

> "The demarcated boundary line starts from the Pacific Ocean at a point on the seashore ten kilometres northwest from the first bridge over the River Lluta of the Arica-La Paz railway, and ends in the Andean mountain range at Boundary Marker V of the former dividing line between Chile and Bolivia."[315]

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[314] Annex 87.

[315] Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers of 21 July 1930. See Annex 54.

Spanish text reads as follows:

> "La línea de frontera demarcada parte del océano Pacífico en un punto en la orilla del mar situado a diez kilómetros hacia el noroeste del primer puente sobre el río Lluta de la vía ferrea de Arica a La Paz, y termina en la cordillera andina en el hito quinto de la antigua línea divisoria entre Chile y Bolivia."

6.46 Thus, as noted in Chapter II, the point where the land boundary meets the sea, according to what was agreed between the Parties in 1929-1930 and discussed above, is known as Point Concordia, having the co-ordinates 18°21'08" S, 70°22'39" W WGS84. It is from this point that the delimitation of the maritime zones between the Parties starts – a matter which is addressed in the following Sections.

V. Construction of the Provisional Equidistance Line

6.47 As was noted in Section II above, the first step in the delimitation process carried out in accordance with the "equidistance/special circumstances" rule involves the establishment of a provisional equidistance line commencing from the starting-point of the land boundary. As the Court made clear in its Judgment in the *Qatar-Bahrain* case, the criteria for constructing the provisional equidistance line are expressed in the following formula, which may be regarded as reflecting customary international law:

> "The equidistance line is the line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured."[316]

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[316] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 94, para. 177, cited with approval in *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), I.C.J. Reports 2002*, p. 442, para. 290. See also the 2007 Award in *The Matter of an Arbitration between: Guyana and Suriname*, para. 352, where the Arbitral Tribunal employed the same definition of the provisional equidistance line.

6.48 These criteria are consistent with the provisions of Article 15 of the 1982 Convention on the Law of the Sea, which in turn reflects the provisions of Article 12 of the 1958 Convention on the Territorial Sea and Contiguous Zone, and from which the "equidistance/special circumstances" rule is derived. In relevant part, Article 15 provides:

> "Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured."[317]

6.49 Given the uncomplicated nature of the Parties' coasts in the vicinity of the land boundary, and the fact that their baselines in this area are "normal" baselines constituted by the low-water mark along their coasts, the plotting of the equidistance line is a straightforward exercise. The basepoints that control the course of that line correspond to the nearest points on the low-water mark of the Parties' respective coasts from which their maritime zones are measured.

6.50 **Figure 6.6** depicts the equidistance line drawn in accordance with the principles enunciated by the Court together with the control points on each Party's coast which dictate the course of the line[318]. The line starts at the initial point of the land boundary (Point Concordia) and ends at the limit of the Parties' respective 200-mile maritime entitlements. It can be seen from the orientation of the line, and the basepoints used for its construction, that there are no distinguishing features on either Party's coast, and no islands, which unduly influence, or distort, the course of the line.

---

[317] Article 15, 1982 Convention on the Law of the Sea ("Delimitation of the territorial sea between States with opposite or adjacent coasts").

[318] In Annex 115, Peru has provided the technical basis for the equidistance line together with the co-ordinates of the turning points on the line using the WGS84 datum, as well as the line's endpoint.

6.51 It follows that, because of the relatively smooth nature of the coasts of the Parties, the equidistance line is more or less a straight line that effects an equal division of the maritime spaces lying off the Parties' respective coasts. As noted above[319], the line produced by the application of the equidistance method is practically the same line that would be produced by use of a bisector method dividing the angle formed by the Parties' respective coastal fronts. This can be seen on **Figure 6.7**, which shows the result that would be produced by application of the bisector method. The fact that the bisector method produces virtually the same result as the equidistance method is hardly surprising given the straightforward nature of the coastal geography abutting the delimitation area.

VI. The Absence of Any Special Circumstances Calling for an Adjustment of the Equidistance Line

6.52 Turning to the second step in the delimitation process, the question arises whether there are any special or relevant circumstances which would justify the shifting of the equidistance line one way or another. The starting-point for this assessment is the geographical character of the area within which the delimitation is to take place. As the Court underlined in the *Cameroon-Nigeria* case:

> "The geographical configuration of the maritime areas that the Court is called upon to delimit is a given. It is not an element open to modification by the Court but a fact on the basis of which the Court must effect the delimitation."[320]

6.53 As Peru has previously explained[321], the geographical configuration of the Parties' coasts abutting the area to be delimited is uncomplicated. There are no geographical features that skew the course of the equidistance line.

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[319] See para. 6.17 above.

[320] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, pp. 443, 445, para. 295.

[321] See, generally, Chap. II and paras. 6.20-6.28 above.

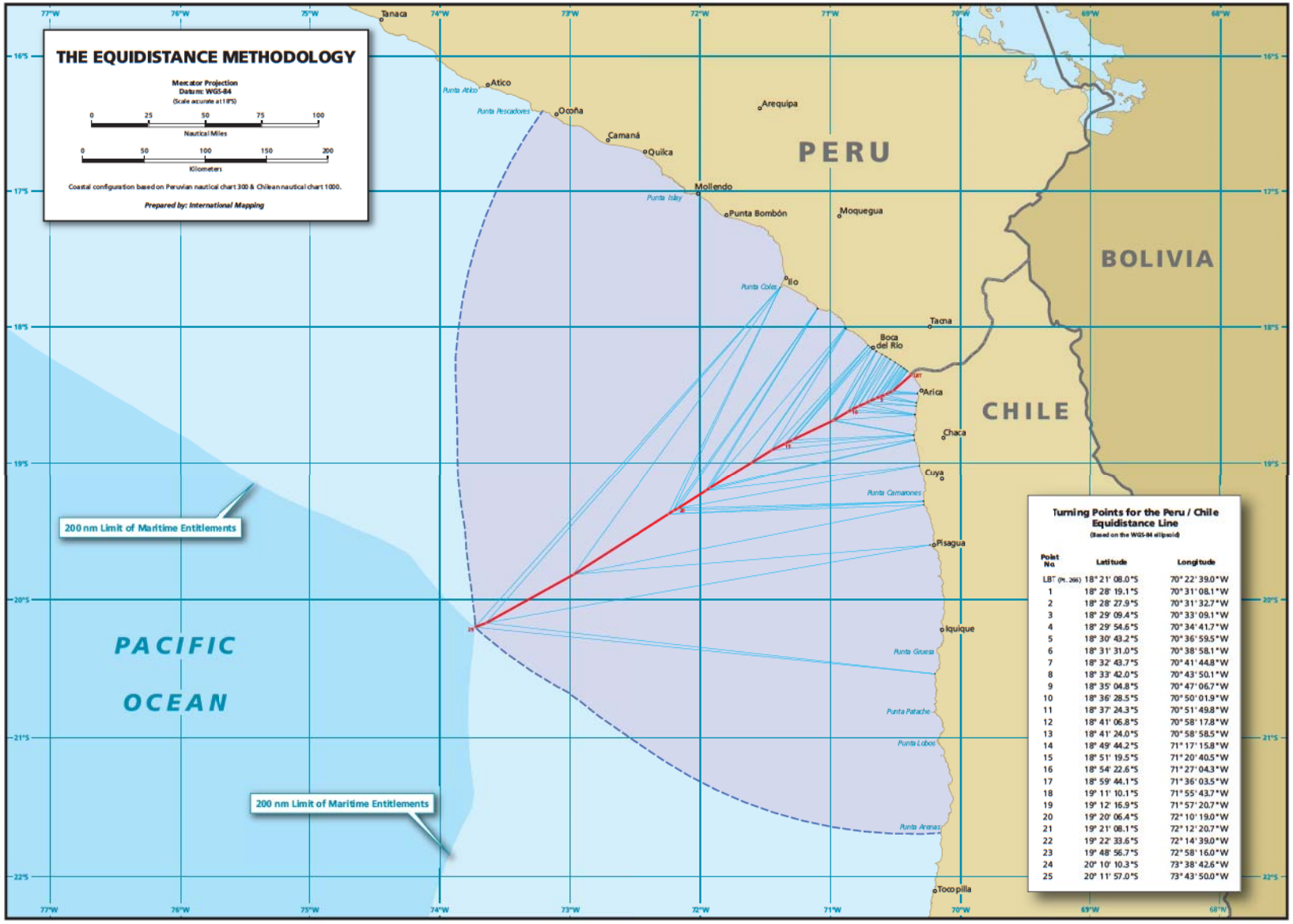
THE EQUIDISTANCE METHODOLOGY
Mercator Projection
Datum: WGS-84
(Scale accurate at 18°S)
0 25 50 75 100
Nautical Miles
0 50 100 150 200
Kilometers
Coastal configuration based on Peruvian nautical chart 300 & Chilean nautical chart 1000.
Prepared by: International Mapping
PERU
BOLIVIA
CHILE
PACIFIC
OCEAN
200 nm Limit of Maritime Entitlements
200 nm Limit of Maritime Entitlements
Tanaca
Atico
Punta Atico
Punta Pescadores
Ocoña
Camaná
Quilca
Arequipa
Mollendo
Punta Islay
Punta Bombón
Moquegua
Ilo
Punta Coles
Tacna
Boca del Rio
Arica
Chaca
Cuya
Punta Camarones
Pisagua
Iquique
Punta Gruesa
Punta Patache
Punta Lobos
Punta Arenas
Tocopilla
Turning Points for the Peru / Chile Equidistance Line
(Based on the WGS-84 ellipsoid)
Point No. Latitude Longitude
LBT (Pt. 266) 18° 21' 08.0"S 70° 22' 39.0"W
1 18° 28' 19.1"S 70° 31' 08.1"W
2 18° 28' 27.9"S 70° 31' 32.7"W
3 18° 29' 09.4"S 70° 33' 09.1"W
4 18° 29' 54.6"S 70° 34' 41.7"W
5 18° 30' 43.2"S 70° 36' 59.5"W
6 18° 31' 31.0"S 70° 38' 58.1"W
7 18° 32' 43.7"S 70° 41' 44.8"W
8 18° 33' 42.0"S 70° 43' 50.1"W
9 18° 35' 04.8"S 70° 47' 06.7"W
10 18° 36' 28.5"S 70° 50' 01.9"W
11 18° 37' 24.3"S 70° 51' 49.8"W
12 18° 41' 06.8"S 70° 58' 17.8"W
13 18° 41' 24.0"S 70° 58' 58.5"W
14 18° 49' 44.2"S 71° 17' 15.8"W
15 18° 51' 19.5"S 71° 20' 40.5"W
16 18° 54' 22.6"S 71° 27' 04.3"W
17 18° 59' 44.1"S 71° 36' 03.5"W
18 19° 11' 10.1"S 71° 55' 43.7"W
19 19° 12' 16.9"S 71° 57' 20.7"W
20 19° 20' 06.4"S 72° 10' 19.0"W
21 19° 21' 08.1"S 72° 12' 20.7"W
22 19° 22' 33.6"S 72° 14' 39.0"W
23 19° 48' 56.7"S 72° 58' 16.0"W
24 20° 10' 10.3"S 73° 38' 42.6"W
25 20° 11' 57.0"S 73° 43' 50.0"W

Figure 6.6

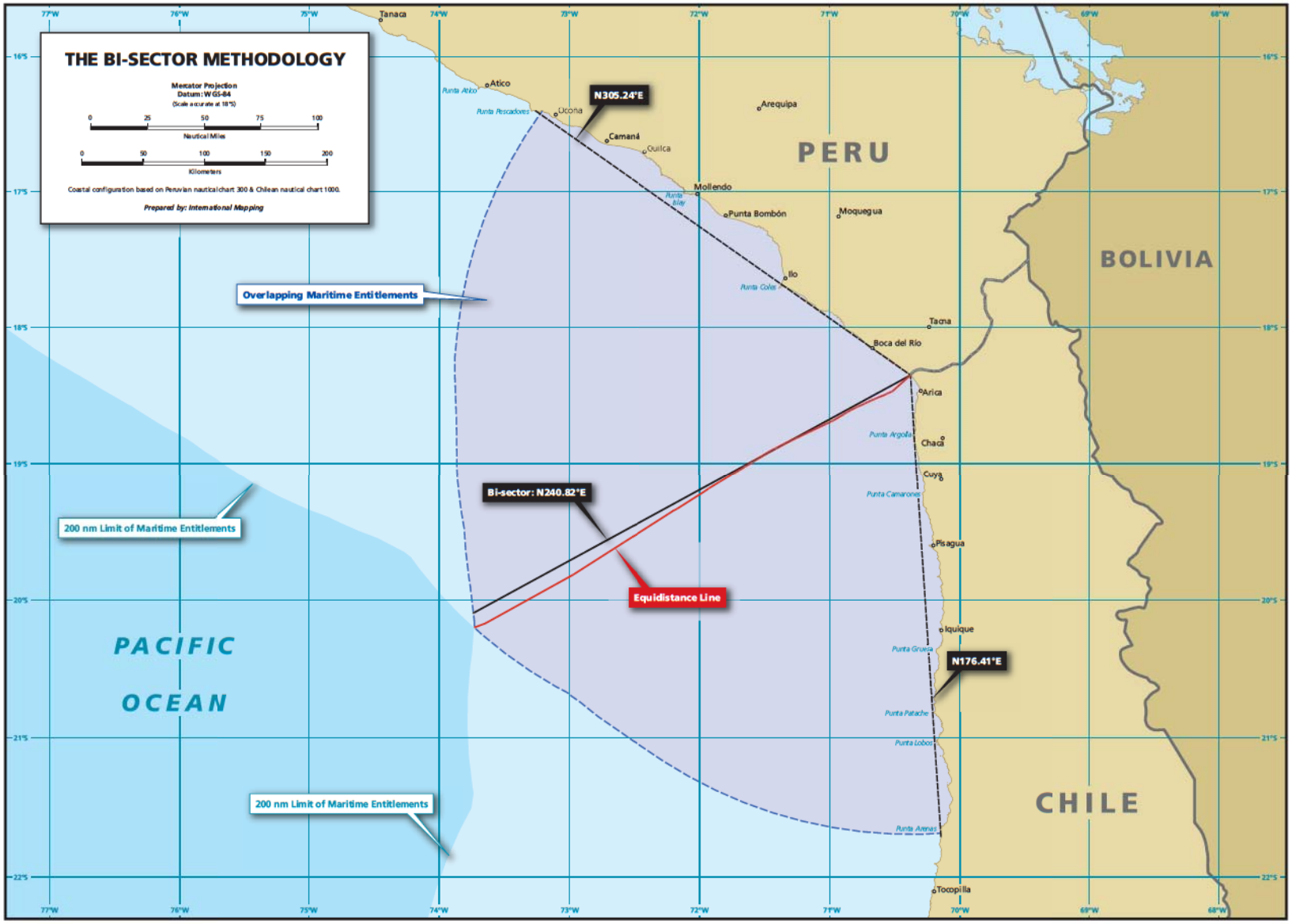
THE BI-SECTOR METHODOLOGY
Mercator Projection
Datum: WGS-84
(Scale accurate at 18°S)
0 25 50 75 100
Nautical Miles
0 50 100 150 200
Kilometers
Coastal configuration based on Peruvian nautical chart 300 & Chilean nautical chart 1000.
Prepared by: International Mapping
Overlapping Maritime Entitlements
200 nm Limit of Maritime Entitlements
200 nm Limit of Maritime Entitlements
Bi-sector: N240.82°E
Equidistance Line
N305.24°E
N176.41°E
PERU
BOLIVIA
CHILE
PACIFIC
OCEAN
Tanaca
Atico
Punta Atico
Punta Pescadores
Ocoña
Camaná
Quilca
Arequipa
Mollendo
Punta Bombón
Moquegua
Punta Coles
Ilo
Tacna
Boca del Rio
Arica
Punta Argolla
Chaca
Cuya
Punta Camarones
Pisagua
Iquique
Punta Gruesa
Punta Patache
Punta Lobos
Punta Arenas
Tocopilla
77°W
76°W
75°W
74°W
73°W
72°W
71°W
70°W
69°W
68°W
16°S
17°S
18°S
19°S
20°S
21°S
22°S

Figure 6.7

6.54 In addition, both Parties' coasts maintain their overall orientation and relationship to each other throughout the relevant area. Peru's coast trends in a north-west direction from the initial point on the land boundary for well over 200 miles past a point on the coast called Punta Pescadores. Chile's coast also maintains its overall north-south orientation down to, and beyond, Punta Arenas.

6.55 It can readily be seen that there is no disparity in the lengths of the Parties' coasts bordering the relevant area, or other distorting features, which might otherwise call for an adjustment of the equidistance line. This situation may be contrasted with more complex geographical settings such as, for example, in the *Gulf of Maine*, *Libya-Malta*, and *Denmark-Norway* cases, where the geography of the area merited an adjustment being made to the equidistance line. Here, application of the equidistance method results in an equal division of the relevant area between coasts of the Parties that are broadly equal and equivalent.

6.56 It was in the light of this straightforward geographical context that, on 27 August 1980 – some 29 years ago – the Head of the Peruvian delegation to UNCLOS III made a statement indicating that "the median line should as a general rule be used, as suggested in the second revision, since it was the most likely method of achieving an equitable solution"[322] which remains Peru's position to the present.

6.57 Further confirmation of the absence of any circumstances calling for the adjustment of the equidistance line in the present case derives from two additional considerations. *First*, the equidistance line results in an equal division of the area to be delimited. *Second*, it respects the change in direction in the Parties' coasts that occurs very near to the point where the land boundary meets the sea, and accords to the coast of each Party an equivalent projection into and under the sea. In other words, the equidistance method produces no undue "cut-off" effect or encroachment on the maritime entitlements of the Parties.

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[322] Declaration of the Head of the Peruvian Delegation, Ambassador Alfonso Arias Schreiber, at UNCLOS III, 27 August 1980, para. 164. Annex 107.

6.58 The notion that, absent the existence of special circumstances, delimitation should achieve an equal division of the relevant maritime area finds support in the Judgment of the Chamber of the Court in the *Gulf of Maine* case where the Chamber put the proposition in the following way:

> "To return to the immediate concerns of the Chamber, it is, accordingly, towards an application to the present case of criteria more especially derived from geography that it feels bound to turn. What is here understood by geography is of course mainly the geography of coasts, which has primarily a physical aspect, to which may be added, in the second place, a political aspect. Within this framework, it is inevitable that the Chamber's basic choice should favour a criterion long held to be as equitable as it is simple, namely that in principle, while having regard to the special circumstances of the case, one should aim at an equal division of areas where the maritime projections of the coasts of the States between which delimitation is to be effected converge and overlap."[323]

6.59 In the present case, the maritime projections of the coasts of Peru and Chile that front the area to be delimited meet and overlap throughout the area lying off the relevant coasts of the Parties on both sides of the terminal point of the land boundary out to a distance of 200 nautical miles. It is apparent, and will be graphically demonstrated in the next Section dealing with the test of proportionality, that an equidistance line produces an equal division of the relevant area of overlapping entitlements. Because there are no geographical circumstances that distort the course of the equidistance line, the equal division produced by such a line is clearly equitable.

6.60 Moreover, delimitation by means of the equidistance method also allocates to the Parties equal access to the resources of the disputed area, a further equitable criterion. The importance to Peru of being accorded equal and equitable access to the marine resources of the area has been discussed in Chapter II[324].

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[323] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 327, para. 195.

[324] See paras. 2.25-2.31 above.

6.61 Related to the concept of the equal division of overlapping maritime entitlements is the principle of non-encroachment, otherwise referred to as the need to avoid a "cut-off" effect on the natural prolongation or projection of either Party's coast into and under the sea.

6.62 By its very nature, maritime delimitation between States with opposite or adjacent coasts entails some degree of amputation, or curtailment, of the legal entitlements that a coastal State would otherwise enjoy if there was no neighbouring State bordering the same area. As explained by the Arbitration Tribunal in the *Guinea-Guinea-Bissau Maritime Delimitation* case:

> "Between two adjacent countries, whatever method of delimitation is chosen, the likelihood is that both will lose certain maritime areas which are unquestionably situated opposite and in the vicinity of their coasts. This is the cut-off effect."[325]

6.63 Nonetheless, the Court has made it clear that the process of effectuating a delimitation between two States in accordance with equitable principles carries with it the requirement that the delimitation line should avoid cutting-off as far as possible, or encroaching unduly, on areas lying off one State's coast to the detriment of that State.

6.64 The principle of non-encroachment finds expression in the Court's Judgment in the *North Sea* cases where the Court indicated, *inter alia*, that delimitation is to be carried out in accordance with equitable principles "in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other"[326].

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[325] *Guinea-Guinea-Bissau Maritime Delimitation, 77 I.L.R.* 636, at p. 681, para. 103.

[326] *North Sea Continental Shelf Cases, Judgment, I.C.J. Reports 1969*, p. 53, para. 101(C) (1).

6.65 In the present case, application of the equidistance method does not produce any cut-off effect or encroachment on the maritime rights of either Party because of the nature of the Parties' coasts abutting the area to be delimited. It is, indeed, the very absence of any special geographical circumstances which renders the application of equidistance equitable in this case. As Professor Weil observed in his seminal work on *The Law of Maritime Delimitation - Reflections*:

> "When maritime areas to which two States have title overlap, the equidistance method allows each of them to exercise sovereign rights up to a certain distance from its coasts wherever these rights come up against the equivalent rights of the other State. At the same time the principle of non-encroachment is safeguarded since, except in a few special situations which then require corrections, equidistance allows the boundary to be fixed at the maximum distance from both States and so avoids any excessive amputation of their maritime projections."[327]

6.66 In contrast, what would produce a dramatic cut-off effect, or encroachment, on Peru's maritime entitlements would be a delimitation line drawn, not equidistant from the Parties' coasts, but rather along the parallel of latitude extending from the terminal point on the land boundary. Yet this is precisely the delimitation line that Chile has previously espoused. As can be seen from **Figure 6.8**, a line drawn according to Chile's position would lie much closer to Peru's coast than to that of Chile. **Figure 6.8** shows, at various places along the coast, how a delimitation line following the parallel of latitude seaward from the initial point on the land boundary would severely and inequitably encroach on Peru's maritime entitlements. Such a line clearly contravenes the non-encroachment principle, produces a radical cut-off of the maritime rights generated by the projection of Peru's coastal front, and in no way achieves the primary goal of achieving an equitable result.

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[327] Weil, Prosper: *The Law of Maritime Delimitation – Reflections*. Cambridge, Grotius, 1989, p. 60.


INEQUITABLE CUTOFF EFFECT CAUSED BY CHILE'S DELIMITATION POSITION
Mercator Projection
Datum: WGS-84
(scale accurate at 18°S)
0 50 100 150
Nautical Miles
0 100 200 300
Kilometers
Coastal configuration based on Peruvian nautical charts 200 & 300, and Chilean nautical chart 1000 & 2000.
Prepared by: International Mapping
PERU
CHILE
PACIFIC OCEAN
General Direction of the Relevant Peruvian Coast: N 307.1° E
General Direction of the Relevant Chilean Coast: N 00.0° E
200 nm
157 nm
100 nm
48.2 nm
17 nm
200 nm
<200 nm
<200 nm
200 nm
Punta Carretas
Punta San Fernando
Punta Atico
Punta Coles
Punta Sama
Punta Camarones
Punta Gruesa
Punta Lobos
Punta Angamos
Punta Tetas
Península Mejillones
Pisco
Paracas
San Juan
Tanaca
Atico
Ocoña
Camaná
Quilca
Pta. Islay
Mollendo
Moquegua
Ilo
Tacna
Vila Vila
Santa Rosa
Arica
Chaca
Cuya
Pisagua
Iquique
Tocopilla
Antofagasta
14°S
16°S
20°S
22°S
24°S
76°W
74°W
72°W
70°W


BALANCED CUTOFF EFFECT OF PERU'S DELIMITATION CLAIM
Mercator Projection
Datum: WGS-84
(Scale accurate at 18°S)
0 50 100 150
Nautical Miles
0 100 200 300
Kilometers
Coastal configuration based on Peruvian nautical charts 200 & 300, and Chilean nautical chart 1000 & 2000.
Prepared by: International Mapping
PERU
CHILE
PACIFIC OCEAN
General Direction of the Relevant Peruvian Coast: N 307.1° E
General Direction of the Relevant Chilean Coast: N 00.0° E
200 nm
200 nm
200 nm
51 nm
168.7 nm
50.6 nm
170.3 nm
<200 nm
200 nm
Punta Carretas
Punta San Fernando
Punta Atico
Punta Coles
Punta Sama
Punta Camarones
Punta Gruesa
Punta Lobos
Punta Angamos
Punta Tetas
Península Mejillones
Pisco
Paracas
San Juan
Tanaca
Atico
Ocoña
Camaná
Quilca
Pta. Islay
Mollendo
Moquegua
Ilo
Tacna
Vila Vila
Santa Rosa
Arica
Cuya
Pisagua
Iquique
Tocopilla
Antofagasta
14°S
16°S
20°S
22°S
24°S
76°W
74°W
72°W
70°W

Figure 6.8

6.67 For example, just north of the land boundary starting-point, Peru would be limited to a projection perpendicular to its coast of just 17 miles while Chile would receive a full 200-mile projection perpendicular to its own coast. At the city of Ilo, Peru's projection would be just 48.2 miles while Chile would continue to receive a 200-mile projection off its coast in the vicinity of Pisagua. In contrast, as can be seen on **Figure 6.8**, if an equitable boundary based on the equidistance method is posited, as Peru has shown to be appropriate, each Party would enjoy maritime projections off the various points along their coasts of equivalent, and equitable, length.

6.68 For all of these reasons, there are no special circumstances justifying an adjustment of the provisional equidistance line. Just as in the *Cameroon-Nigeria, Qatar-Bahrain and Guyana-Suriname* cases the equidistance line in and of itself achieved an equitable result, so also does it do so here.

VII. The Equidistance Line Satisfies the Test of Proportionality

6.69 In this Section, Peru will apply the proportionality test to its claim – the equidistance line – and show that an equidistance boundary fully satisfies that test in accordance with the application of equitable principles. In contrast, as will also be seen, a delimitation line which would follow the parallel of latitude extending from the initial point on the land boundary would produce a wholly disproportionate, and hence inequitable, result.

6.70 In discussing the role of proportionality in this case, Peru is mindful of the fact that proportionality, in terms of a mathematical ratio between coastal lengths and maritime areas appertaining to those coasts, is not a method of delimitation in and of itself. As the Chamber of the Court stated in the *Gulf of Maine* case:

> "The Chamber's views on this subject may be summed up by observing that a maritime delimitation can certainly not be established by a direct division of the area in dispute proportional

> to the respective lengths of the coasts belonging to the parties in the relevant area"[328].

6.71 Rather, proportionality provides an *ex post facto* test of the equitable nature of a delimitation line arrived at by other means – namely, by application of the principles and rules of maritime delimitation to the facts of the case. To quote the relevant passage from the Court's Judgment in the *Libya-Malta* case on the role of proportionality:

> "It has been emphasized that this latter operation is to be employed solely as a verification of the equitableness of the result arrived at by other means."[329]

In contrasting the role that a marked difference in coastal lengths can play as a relevant circumstance, on the one hand, and the element of proportionality as an *a posteriori* test, on the other, the Court added that –

> "the test of a reasonable degree of proportionality … is one which can be applied to check the equitableness of any line, whatever the method used to arrive at that line."[330]

6.72 In the present case, Peru has shown in Section III above that the Parties possess equivalent coastal fronts extending on both sides of the land boundary. Regardless of how those coasts are measured, there is no disproportion between the lengths of the respective coasts of Peru and Chile that abut the area to be delimited. Coastal lengths, therefore, do not constitute a relevant circumstance calling for any adjustment to be made to the equidistance line. In addition, due to the straightforward configuration of the Parties' coasts fronting the area to be delimited and the absence of third States in the region, the element of proportionality can readily be employed on an *ex post facto* basis to test the equitableness of the equidistance line within the relevant delimitation area.

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[328] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 323, para. 185.

[329] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 49, para. 66.

[330] *Ibid.*

6.73 **Figure 6.9** shows the results of applying the proportionality test to Peru's delimitation line constructed on the basis of the equidistance method within the relevant area. The relevant area, it will be recalled, was identified earlier in this chapter as comprising the area of overlapping maritime entitlements appertaining to the Parties within 200 nautical miles of the initial point of their land boundary.

6.74 It can be seen that the equidistance line results in some 84,782 square kilometres of maritime area appertaining to Peru, and some 80,143 square kilometres to Chile, or a ratio of 51.4% to 48.6%. Quite clearly, there is no disproportion at all produced by application of the equidistance method in this situation. As noted earlier, the equidistance line can also be seen to produce an equal division of the area of overlapping entitlements. The proportionality test confirms this fact, and demonstrates that the equidistance line is entirely equitable.

6.75 What is striking, on the other hand, is the result that would be produced by adopting the parallel of latitude advocated by Chile as the maritime boundary. **Figure 6.10** illustrates how such a line produces a radically disproportionate result: 118,467 square kilometres, or some 71.8% of the area would fall to Chile, while only 46,458 square kilometres, or 28.2% of the area, would appertain to Peru. Given the similarity of the Parties' coasts bordering the relevant area, such a result clearly fails the proportionality test and is inequitable in the extreme.

VIII. Conclusions

6.76 Based on the previous discussion, Peru presents the following conclusions with respect to the application of the principles and rules of maritime delimitation to the facts of the case.

(a) The overall aim of maritime delimitation is to achieve an equitable result.

(b) The applicable principles and rules of delimitation find their expression in the "equitable principles/relevant circumstances" rule which is similar to the "equidistance/special circumstances" rule.

(c) The relevant coasts of the Parties and the relevant area within which the delimitation is to be effectuated are circumscribed by the coasts of each Party lying within 200 nautical miles of the initial point on the land boundary.

(d) The starting-point for the delimitation is Point Concordia identified and established pursuant to the 1929 Treaty of Lima and the subsequent agreement of the Parties in 1930 on the Treaty's implementation.

(e) The provisional equidistance line is a line drawn from the nearest points on the baselines on the Parties' coasts from which the outer limit of their maritime zones is measured. The construction of such a line in this case is a straightforward exercise.

(f) There are no special circumstances calling for an adjustment of the provisional equidistance line which therefore represents an equitable maritime delimitation.

(g) The equitable character of a delimitation carried out by application of the equidistance method is confirmed by the fact that the resulting line effects an equal division of the Parties' overlapping maritime entitlements and does not result in any undue encroachment on the projections of the Parties' respective coasts or any cut-off effect.

(h) Application of the element of proportionality as an *ex post facto* test confirms the equitable nature of the equidistance line.

(i) In contrast, a boundary line drawn along the parallel of latitude extending from the initial point on the land boundary does not satisfy the test of proportionality, and produces a line that cuts-off, and seriously encroaches upon, Peru's maritime rights.

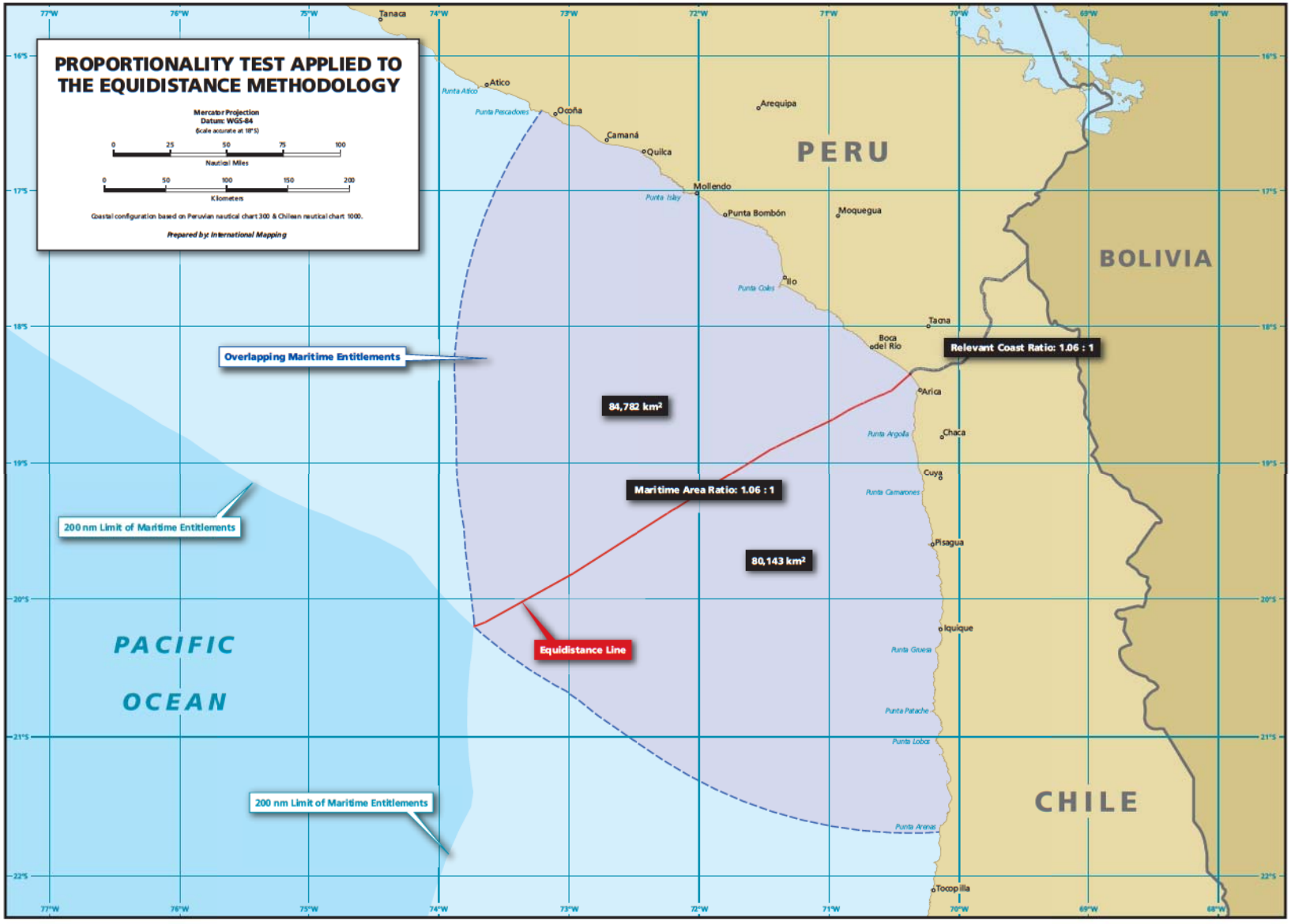
PROPORTIONALITY TEST APPLIED TO THE EQUIDISTANCE METHODOLOGY
Mercator Projection
Datum: WGS-84
(scale accurate at 18°S)
0 25 50 75 100
Nautical Miles
0 50 100 150 200
Kilometers
Coastal configuration based on Peruvian nautical chart 300 & Chilean nautical chart 1000.
Prepared by International Mapping
Overlapping Maritime Entitlements
84,782 km²
Relevant Coast Ratio: 1.06 : 1
Maritime Area Ratio: 1.06 : 1
80,143 km²
Equidistance Line
200 nm Limit of Maritime Entitlements
200 nm Limit of Maritime Entitlements
PERU
BOLIVIA
CHILE
PACIFIC
OCEAN
Tanaca
Atico
Punta Atico
Punta Pescadores
Ocoña
Camaná
Quilca
Arequipa
Mollendo
Punta Islay
Punta Bombón
Moquegua
Ilo
Punta Coles
Tacna
Boca del Rio
Arica
Punta Arguda
Chaca
Cuya
Punta Camarones
Pisagua
Iquique
Punta Gruesa
Punta Patache
Punta Lobos
Punta Arenas
Tocopilla
77°W
76°W
75°W
74°W
73°W
72°W
71°W
70°W
69°W
68°W
16°S
17°S
18°S
19°S
20°S
21°S
22°S

Figure 6.9

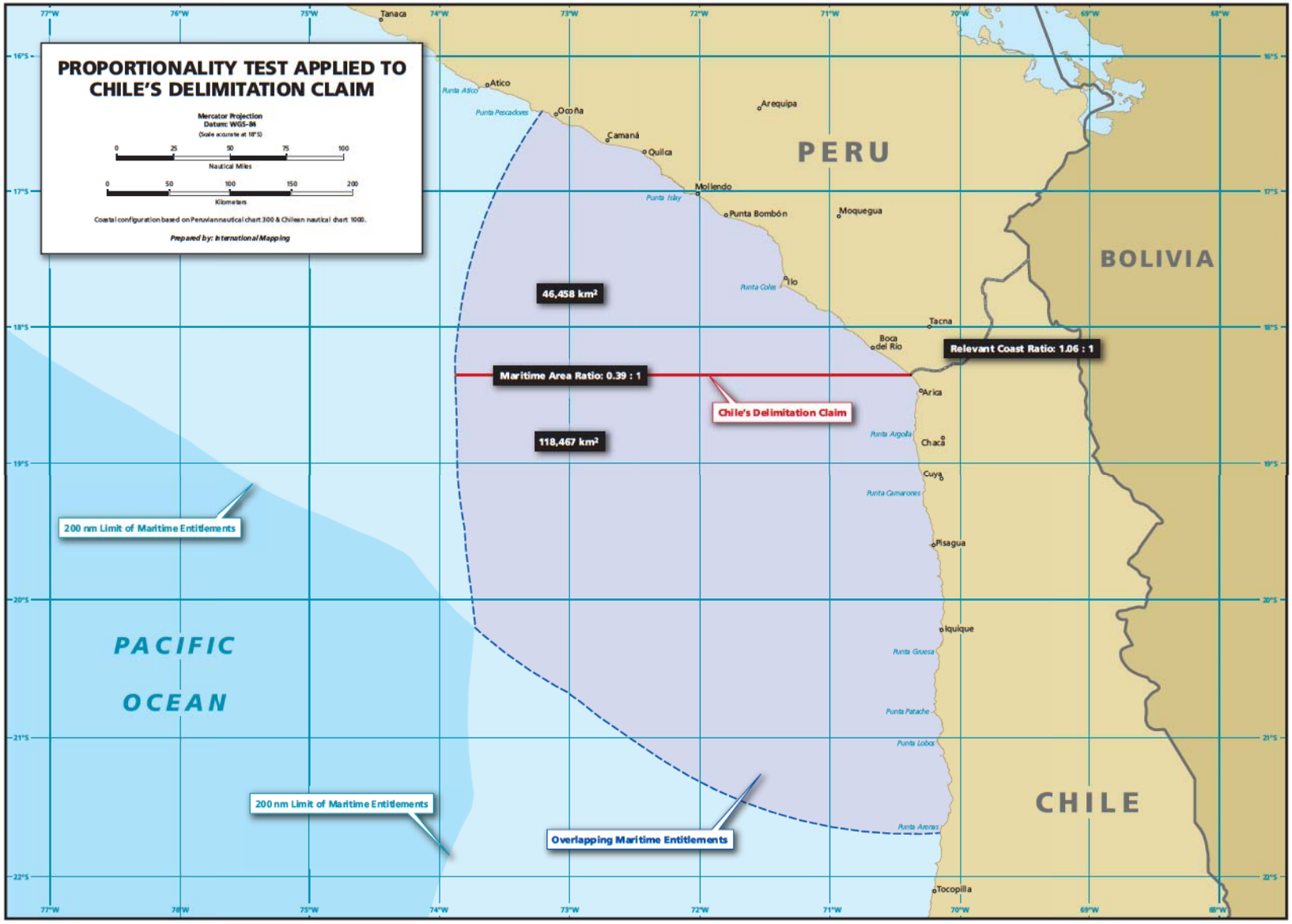
PROPORTIONALITY TEST APPLIED TO CHILE'S DELIMITATION CLAIM
Mercator Projection
Datum: WGS-84
(Scale accurate at 18°S)
0 25 50 75 100
Nautical Miles
0 50 100 150 200
Kilometers
Coastal configuration based on Peruvian nautical chart 300 & Chilean nautical chart 1000.
Prepared by: International Mapping
PERU
BOLIVIA
CHILE
PACIFIC
OCEAN
46,458 km²
118,467 km²
Maritime Area Ratio: 0.39 : 1
Relevant Coast Ratio: 1.06 : 1
Chile's Delimitation Claim
200 nm Limit of Maritime Entitlements
200 nm Limit of Maritime Entitlements
Overlapping Maritime Entitlements
Tanaca
Atico
Ocoña
Camaná
Quilca
Arequipa
Mollendo
Punta Bombón
Moquegua
Ilo
Tacna
Boca del Rio
Arica
Chaca
Cuya
Pisagua
Iquique
Tocopilla
Punta Atico
Punta Pescadores
Punta Isay
Punta Coles
Punta Angola
Punta Camarones
Punta Gruesa
Punta Patache
Punta Lobos
Punta Arenas
77°W
76°W
75°W
74°W
73°W
72°W
71°W
70°W
69°W
68°W
16°S
17°S
18°S
19°S
20°S
21°S
22°S

Figure 6.10

CHAPTER VII

PERU'S MARITIME ENTITLEMENTS OFF ITS SOUTHERN COAST – THE 'OUTER TRIANGLE'

I. Introduction

7.1 As will be apparent from Chapter III above, Peru is entitled to a maritime domain up to a distance of 200 nautical miles "from the baselines from which the breadth of the territorial sea is measured."[331] Although, as a matter of principle, Chile has recognised the right of all States – and especially Peru – to claim such a jurisdictional zone[332], it nevertheless denies the rights of Peru over an area off its southern coasts and lying within 200 nautical miles of Peru's baselines but more than 200 nautical miles from Chile's own coasts. This denial was made with particular clarity in the Statement of the Chilean Government of 12 September 2007, by which it expressed its disagreement with the Peruvian Supreme Decree No. 047-2007-RE of 11 August 2007 approving the Chart of the Outer Limit – Southern Sector – of the Maritime Domain of Peru and with the attached map[333] and protested against the alleged "intent" of these instruments "to attribute to Peru a maritime area, which is fully subject to the sovereignty and sovereign rights of Chile, as well as an adjacent area of the High Seas."[334]

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331 Article 57 ("Breadth of the exclusive economic zone"), 1982 Convention on the Law of the Sea; see also Article 76, para. 1 ("Definition of the continental shelf").

332 See paras. 3.24-3.36 above.

333 See para. 3.18 and **Figure 2.4** above.

334 Statement by Chile received by the Secretariat of the United Nations on 12 September 2007. Annex 114.

7.2 This maritime zone over which Chile has no right whatsoever, and which entirely falls under the exclusive jurisdiction of Peru, constitutes what will be called hereinafter "the outer triangle".

7.3 If one were to follow Chile's argument as understood by Peru at this stage, the maritime border between the Parties would follow the 18°21'00" S WGS84 parallel[335] up to a distance of 200 nautical miles from the coast. The line would thus stop at point X as depicted on **Figure 7.1**, where the limit claimed by Chile is represented by the red line D-X (D being the point of departure from the coast – see Chapter VI). Point X is the extreme point beyond which Chile cannot claim any sovereign rights. However, as also shown on **Figure 7.1**, point X is situated only 120.5 nautical miles from the closest point of the Peruvian baseline. As a result, independently of the general argument set out in the previous chapter of this Memorial, Peru's rights over the area represented by the dark blue triangle X-Y-Z on **Figure 7.1** are clearly indisputable under the most basic principles of the Law of the Sea.

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[335] The maritime boundary claimed by Chile is a rhumb line (or a small circle) as opposed to a geodesic (or great circle). By definition, a great circle is formed by a plane that passes through the center of the Earth and a small circle is formed by any plane that passes through the Earth but does not pass through the Earth's centre. A rhumb line is also characterized as a line of constant compass direction, whereas most geodesics are not Chile's maritime boundary line plotted on a map (based on WGS84 datum) would have a starting-point of 18 degrees 21 minutes 00.43 seconds South latitude – 70 degrees 22 minutes 34.72 seconds West longitude and a directional bearing of North 270 degrees East. These two parameters, the starting-point claimed by Chile and the directional bearing, define a rhumb line that runs due west along the latitude of 18 degrees 21 minutes 00.43 seconds South.

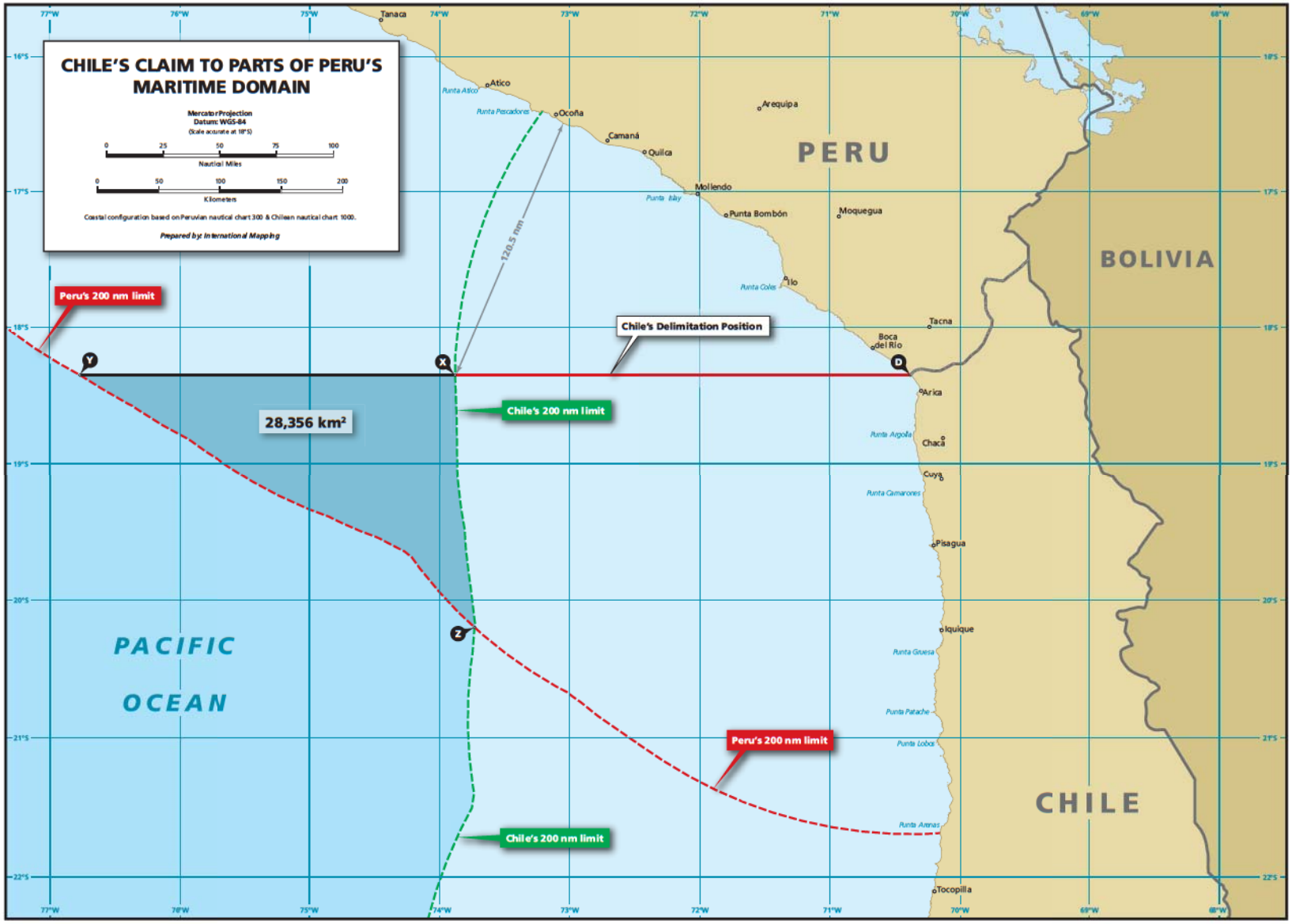
CHILE'S CLAIM TO PARTS OF PERU'S MARITIME DOMAIN
Mercator Projection
Datum: WGS-84
(Scale accurate at 18°S)
0 25 50 75 100
Nautical Miles
0 50 100 150 200
Kilometers
Coastal configuration based on Peruvian nautical chart 300 & Chilean nautical chart 1000.
Prepared by: International Mapping
Peru's 200 nm limit
Chile's Delimitation Position
Chile's 200 nm limit
28,356 km²
120.5 nm
Peru's 200 nm limit
Chile's 200 nm limit
PERU
BOLIVIA
CHILE
PACIFIC
OCEAN
Tanaca
Atico
Punta Atico
Punta Pescadores
Ocoña
Camaná
Quilca
Arequipa
Mollendo
Punta Bombón
Moquegua
Punta Coles
Ilo
Tacna
Boca del Rio
Arica
Punta Agolla
Chaca
Cuya
Punta Camarones
Pisagua
Iquique
Punta Gruesa
Punta Patache
Punta Lobos
Punta Arenas
Tocopilla
X
Y
Z
D

Figure 7.1

7.4 In effect, as has been recalled in Chapter IV above, the modern Law of the Sea grants to all coastal States a maritime domain which extends to a distance of 200 nautical miles from its coasts or, more precisely, from its baselines. This fundamental principle – in the establishment of which both Chile and Peru have played an essential role[336] – is now embodied in the 1982 Convention on the Law of the Sea and, in particular, in Articles 57 and 76 (1), which must be quoted again:

> "Article 57
> *Breadth of the exclusive economic zone*
>
> The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.
>
> Article 76
> *Definition of the continental shelf*
>
> 1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."

7.5 As a consequence, in cases such as the present, where the outer edge of the continental shelf in its geomorphological sense does not extend beyond 200 nautical miles from the baselines, this distance constitutes the maximum extent of the maritime domain of the coastal States. Beyond that area lies the high seas as is unambiguously recalled by Article 86 of the 1982 Convention on the Law of the Sea:

> "The provisions of this Part [VII, "High Seas"] apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State."

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[336] See Chap. IV, Sec. II above.

7.6 The combination of these principles leads to two main obvious conclusions:

- *First*, the Peruvian maritime domain extends up to 200 nautical miles from its baselines; and
- *Second*, for its part, the Chilean maritime domain cannot extend any further than to a distance of 200 nautical miles from Chile's own baselines.

If one looks at **Figure 7.1** it will be apparent that, quite independently of the lateral delimitation between the respective maritime domains of the Parties up to the distance of 200 miles from the Chilean coasts, there exists off Peru's Southern coast a maritime area forming a "triangle" over which Chile has no rights and over which Peru possesses exclusive and inherent sovereign rights. This is the 'outer triangle'.

7.7 However, this unambiguous situation has not prevented Chile from disputing Peru's rights over this area that Chile now describes as its "Presential Sea" ("*Mar Presencial*") and over which it itself purports to have preferential rights. As will be shown in the present chapter, such a claim is entirely incompatible with Peru's exclusive sovereign rights over the area in question.

II. The Chilean Claimed Rights in the Area

7.8 By fabricating the novel concept of "Presential Sea", Chile introduced into the already long list of maritime areas subject to specific legal regimes a new concept which, in its geographical extent as defined by Chile, is, in the present case, clearly incompatible with the exclusive sovereign rights appertaining to Peru.

7.9 This new concept seems to have appeared in the Chilean official vocabulary in the early 1990s. On 4 May 1990, Admiral Jorge Martínez Busch, Commander in Chief of the Chilean Navy, defined it as a part of the high

seas appertaining to the Chilean "oceanic territory" (*territorio oceánico*)[337]. According to Admiral Martínez Busch, this concept emphasizes –

> "the need 'to be present in these high seas, observing and participating in the same activities as those carried out in them by other States' and, working within the legal status of the high seas established by the United Nations Convention on the Law of the Sea, those activities constituting for the Chilean State a means of safeguarding national interests and counteracting direct or indirect threats to its development and, therefore, to its security."[338]

Spanish text reads as follows:

> "la necesidad de 'estar en esta alta mar, observando y participando en las mismas actividades que en ella desarrollan otros Estados' y que, actuando dentro del estatus jurídico de la alta mar establecido por la Convención sobre el Derecho del Mar de las Naciones Unidas, constituyan para el Estado de Chile una forma de cautelar los intereses nacionales y de contrarrestar amenazas directas o indirectas a su desarrollo y, por lo tanto, a su seguridad."

7.10 Although in 1992 the Chilean Minister of Foreign Affairs presented the concept of the Presential Sea as an "academic thesis"[339], that concept had already

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337 Martínez Busch, Jorge: "Ocupación efectiva de nuestro mar, la gran tarea de esta generación". (*Revista de Marina* No. 3, 1990, p. 242).

338 *Ibid.*

339 "Discurso del señor Ministro de Relaciones Exteriores de Chile, don Enrique Silva Cimma, con motivo de celebrarse cuarenta años de la Declaración de Santiago, sobre zona marítima de las 200 millas marinas". Typed document, Santiago, 18 August 1992, p. 15, quoted by Agüero Colunga, Marisol, *op. cit.*, p. 328. For the literature on the "Presential Sea", see *e.g.*: Joyner C. and de Cola P.: "Chile's Presential Sea Proposal: Implications for Straddling Stocks and the International Law of Fisheries". (*Ocean Development and International Law*, Vol. 24, 1993, pp. 99-121); Orrego Vicuña, F.: "The 'Presential Sea': Defining Coastal States Special Interests in High Seas Fisheries and Other Activities". (*German Yearbook of International Law*, Vol. 35, 1993, pp. 264-292); Clingan, Thomas A., Jr.: "Mar Presencial (the Presential Sea): Déjà Vu All Over Again? – A Response to Francisco Orrego Vicuña". (Ocean Development and International Law, Vol. 24, 1993, pp. 93-97); Dalton, J.G: "The Chilean Mar Presencial: A Harmless Concept or a Dangerous Precedent?". (*Journal of Marine and Coastal Law*, Vol. 8, No. 3, 1993, pp. 397-418).

been formally sanctioned by the Chilean Law No. 19.080 of 28 August 1991 amending the General Fishing and Aquaculture Law No. 18.892 of 22 December 1989, according to which:

> "Presential Sea: Is that portion of the high seas, existing for the international community, between the limit of our continental exclusive economic zone and the meridian which, crossing through the western border of the continental shelf of Easter Island, extends from the parallel of Boundary Marker No. 1 of the international border line separating Chile and Peru, to the South Pole."[340]

Spanish text reads as follows:

> "Mar presencial: Es aquella parte de la alta mar, existente para la comunidad internacional entre el límite de nuestra zona económica exclusiva continental y el meridiano que, pasando por el borde occidental de la plataforma continental de la Isla de Pascua, se prolonga desde el paralelo del hito N° 1 de la línea fronteriza internacional que separa Chile y Perú, hasta el Polo Sur."

Thus, the area in question is not merely a political claim made by the Chilean Navy but a statutory reality formally endorsed by the Chilean State.

7.11 In Chile's *Defence White Book* edited in 2002, the Presential Sea is also defined as –

> "the ocean space comprised between the border of our Exclusive Economic Zone and the meridian that going through the western [edge][341] of the continental shelf of Easter Island

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[340] Law No. 19.080 of 28 August 1991, Art. 1(a). Annex 38; Decree No. 430/91 of 28 September 1991, establishing the Consolidated, Co-ordinated and Systematised Text of Law No. 18.892 of 1989 and its Amendments, General Law on Fishing and Aquaculture, Art. 2 (25) <http://www.directemar.cl/reglamar/publica-es/tm/tm-066.pdf> accessed 27 November 2008; see also Arts. 43, 124 or 172. In the same sense, see Supreme Decree No. 598 of 15 October 1999. Annex 41.

[341] This word is mistakenly omitted in Chile's *Defence White Book*.

> stretches out from the parallel of Boundary Marker No. 1 up to the South Pole. This concept expresses the wish of Chile to have a presence in this area of high seas for the purpose of projecting maritime interests with respect to the rest of the international community, monitoring the environment and preserving marine resources, with unrestricted adherence to International Law"[342].

Spanish text reads as follows:

> El espacio oceánico comprendido entre el límite de nuestra Zona Económica Exclusiva y el meridiano que, pasando por el [borde] occidental de la plataforma continental de la Isla de Pascua, se prolonga desde el paralelo del hito fronterizo N° 1 hasta el Polo Sur. Este concepto expresa la voluntad de ejercer presencia en esta área de la alta mar con el propósito de proyectar intereses marítimos respecto del resto de la comunidad internacional, vigilar el medio ambiente y conservar los recursos marinos, con irrestricto apego al Derecho Internacional.

7.12 It may be noted that the Chilean Navy website includes a map illustrating the extent of the Presential Sea (20 million square kilometres) along with other areas. That map is reproduced as **Figure 7.2** [343].

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[342] Libro de la Defensa Nacional de Chile 2002, Part I, Point 2.2, p. 32. Annex 111.

[343] Visión Océano Política on the webpage of the Chilean Navy –<http://www.armada.cl/p4_armada_actual/site/artic/20050404/pags/20050404130814.html> accessed 10 December 2008.

7.13 The General Fishing and Aquaculture Law as amended refers to concrete activities which Chile purports to regulate and control within the "Presential Sea". They include prohibitions, such as closed seasons and capture quotas (Article 3), prohibition of specific types of rigs (Article 5); orders and management plans, such as determination of sizes and weights (Article 4), unloading percentage (Article 3); sanctions (Article 2, paragraph 47), provisions on security (the Navy must keep a record of activities in the Presential Sea) (Article 172) and the right to collect registration fees (Article 43). And, in accordance with Article 124:

> "Proceedings for violations of this Law must be brought before civil courts with jurisdiction in the districts where those violations occurred or where they first began.
>
> Had violations occurred or begun in internal waters, the territorial sea, the exclusive economic zone or the presential sea or in the case of Article 110 h), in the high seas; civil courts of the cities of Arica, Iquique, Tocopilla, Antofagasta, Chañaral, Caldera, Coquimbo, Valparaíso, San Antonio, Pichilemu, Constitución, Talcahuano, Temuco, Valdivia, Puerto Montt, Castro, Puerto Aysén, Punta Arenas or Easter Island shall have jurisdiction over those violations."[344]

Spanish text reads as follows:

> "El conocimiento de los procesos por infracciones de la presente ley corresponderá a los jueces civiles con jurisdicción en las comunas donde ellas se hubieren cometido o donde hubiesen tenido principio de ejecución.
>
> Si la infracción se cometiere o tuviere principio de ejecución en aguas interiores marinas, el mar territorial, en la zona económica exclusiva, o en el mar presencial o en la alta mar

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[344] Decree No. 430/91 of 28 September 1991, establishing the Consolidated, Co-ordinated and Systematised Text of Law No. 18.892 of 1989 and its Amendments, General Law on Fishing and Aquaculture, Art. 124 <http://www.directemar.cl/reglamar/publica-es/tm/tm-066.pdf> accessed 27 November 2008.

MARITIME AREAS THAT PERTAIN TO CHILE ACCORDING TO THE CHILEAN NAVY

Map published on the Chilean Navy web site at:
www.armada.cl/p4_armada_actual/site/artic/20050404/pags/20050404130814.html

Figure 7.2

> en el caso de la letra h) del artículo 110, será competente el juez civil de las ciudades de Arica, Iquique, Tocopilla, Antofagasta, Chañaral, Caldera, Coquimbo, Valparaíso, San Antonio, Pichilemu, Constitución, Talcahuano, Temuco, Valdivia, Puerto Montt, Castro, Puerto Aysén, Punta Arenas, o el de Isla de Pascua."

7.14 Chile has also extended to its "Presential Sea" the application of its Laws No. 18.302 of Nuclear Security of 16 April 1984, as modified on 1 October 2002[345], and No. 19.300 of 1 March 1994 on the Environment[346].

7.15 Although these laws assert that these practices shall be carried out without prejudice to international agreements, the fact is that the main instrument regulating the matter –the 1982 Convention on the Law of the Sea which reflects general international law on this point – does not provide for any intermediary zone between the high seas and the EEZs or continental shelves of coastal States and clearly excludes jurisdictional and sovereign regulations of this nature in the *exclusive* maritime zone of another country.

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[345] See Art. 4 of Law No. 18.302 of 16 April 1984, Law of Nuclear Security, as amended: "… for the entry or transit of nuclear substances or radioactive materials across the national territory, the exclusive economic zone, the *presential sea* and the national airspace" (emphasis added). Annex 35. (Spanish text: "… para el ingreso o tránsito por el territorio nacional, zona económica exclusiva, mar presencial y espacio aéreo nacional de sustancias nucleares o materiales radiactivos"); Art. 54: "Besides, to the effect of this law, all carriers of nuclear substances or radioactive materials that use Chile's national airspace, territorial sea, *presential sea* and exclusive economic zone shall be considered as operators" (emphasis added). (Spanish text: "Además, será considerado como explotador, para efectos de esta ley, todo transportista de sustancias nucleares o de materiales radiactivos que utilice el espacio aéreo nacional, el mar territorial, el mar presencial y la zona económica exclusiva chilena").

[346] See Art. 33 of Law No. 19.300 of 1 March 1994, General Environmental Law: "The competent State agencies shall develop programmes to measure and control the environmental quality of air, water and soil so as to ensure full respect for the right to live in a pollution-free environment. These programmes shall be regionalized. Regarding the Exclusive Economic Zone and the *Presential Sea* on Chile, the antecedents on these subjects will be compiled (emphasis added)." Annex 39. (Spanish text: "Los organismos competentes del Estado desarrollarán programas de medición y control de la calidad ambiental del aire, agua y suelo para los efectos de velar por el derecho a vivir en un medio ambiente libre de contaminación. Estos programas serán regionalizados. Respecto de la Zona Económica Exclusiva y del Mar Presencial de Chile se compilarán los antecedentes sobre estas materias.").

7.16 The Chilean legislation makes clear that Chile unilaterally claims a right to "extend its jurisdiction within a certain range beyond the EEZ to protect and conserve maritime resources, including straddling and migratory fish stocks"[347] and to enforce its regulations in this area.

7.17 As might have been expected, the Chilean claim provoked protests from other States, notably from the European Communities, and, in particular, from Spain.

7.18 As noted by the European Commission, the Chilean claim –

> "provides for a peculiar and insofar isolated interpretation of the concept of Exclusive Economic Zone as described in the LOSC.
> ...
> While the main emphasis of Mar Presencial is resource conservation and managed resource exploitation, it amounts in fact largely to the exclusion of non-Chilean fishing fleets from the area. Moreover it breaks the delicate balance struck between the coastal states and the high sea fishing nations when the LOSC was adopted"[348].

7.19 For their part, the Spanish authorities pointed out that the promulgation of these regulations was a Chilean unilateral act embedded within the expansionist context of the "Presential Sea" concept[349].

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[347] European Commission, *Report to the Trade Barriers Regulation Committee*, "TBR proceedings concerning Chilean practices affecting transit of swordfish in Chilean ports", March 1999, p. 35 <http://trade.ec.europa.eu/doclib/docs/2004/october/tradoc_112193.pdf> accessed 28 November 2008.

[348] *Ibid.*, pp. 35, 38.

[349] Report presented by Chile's National Section in the First Session of the I Ordinary Assembly of the Permanent Commission for the South Pacific held in Guayaquil, Ecuador on 23-24 July 2002 <http://www.cpps-int.org/spanish/asambleas/iasamblea/primerasesion/Controversia%20ChileUE%20por%20el%20pez%20espada.pdf> accessed 5 December 2008.

7.20 It is not Peru's intention to offer general views as to the lawfulness of Chilean claims to a "Presential Sea" or the compatibility of this very unusual concept with the modern Law of the Sea, either customary or as embodied in the 1982 Convention on the Law of the Sea. For present purposes, suffice it to note that even though the area is prudently described as a "portion of the high seas" in several Chilean regulations, it is clear that this unilaterally defined zone encroaches upon Peru's exclusive maritime zone and is therefore clearly incompatible with Peru's sovereign rights up to a distance of 200 nautical miles from its baselines.

III. The Chilean Claim Is Incompatible with Peru's Exclusive Sovereign Rights Up to a Distance of 200 Nautical Miles Off Its Southern Coast

7.21 The definition of the geographical extent of the "Mar Presencial" claimed by Chile in these various instruments is highly revealing of Chile's intent to use this concept as a means of depriving Peru of its sovereign rights over this area.

A. Chile's Claimed "Presential Sea" Encroaches upon Peru's Maritime Domain

7.22 As mentioned above[350], the Chilean "Presential Sea" would be situated –

> "between the limit of [Chile's] continental exclusive economic zone and the meridian which, crossing through the western border of the continental shelf of Easter Island, extends from *the parallel of Boundary Marker No. 1 of the international border line separating Chile and Peru*, to the South Pole (emphasis added)."[351]

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[350] See para. 7.10 above.

[351] Law No. 19.080 of 28 August 1991. Annex 38.

Spanish text reads as follows:

> "entre el límite de nuestra zona económica exclusiva continental y el meridiano que, pasando por el borde occidental de la plataforma continental de la Isla de Pascua, se prolonga desde el paralelo del hito N° 1 de la línea fronteriza internacional que separa Chile y Perú, hasta el Polo Sur".

This description substituted the original definition of this concept, as it was presented by Admiral Jorge Martínez Busch, according to which the "Presential Sea" would lie –

> "between the limit of [Chile's] continental exclusive economic zone and the meridian which, crossing through the western border of the continental shelf of Easter Island, extends *from the parallel of Arica (marker 1)* to the South Pole." (Emphasis added)[352].

Spanish text reads as follows:

> "entre el límite de nuestra zona económica exclusiva continental y el meridiano que pasando por el borde occidental de la plataforma continental de la isla de Pascua se prolonga desde el paralelo de Arica (hito 1) hasta el Polo Sur."

The nuance might seem limited; it is nevertheless significant of the will of Chile to: *(a)* reaffirm the existence of a limit between both countries constituted by the parallel and *(b)* assert its own rights beyond this erroneously allegedly agreed limit.

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[352] Martínez Busch, Jorge, *loc. cit.*

7.23 This extension of the "Presential Sea" has been confirmed on one official map issued by the Chilean Hydrographic Office in 1992, which is reproduced as **Figure 7.3** and in the 2005 National Atlas of Chile[353]. As will be apparent, the area thus defined and illustrated includes a maritime area which extends beyond the limit of 200 nautical miles from the Chilean baselines, thus depriving Peru of part of its legal continental shelf and of its rights to an EEZ in an area which lies within 200 miles of Peru's coast but more than 200 miles from the coast of any other State. If Chile's claim were to be accepted, Peru would be deprived of its legitimate sovereign and exclusive rights in the area in question, which forms a triangle of 8,257 square nautical miles (28,356 square kilometres) particularly rich in halieutic resources.

7.24 Consequently, Peru would be doubly penalized:

(a) as a consequence of the argument of the parallel, Chile would obtain sovereign rights over the area extending up to 200 nautical miles from its coasts all along its littoral, while, for its part, Peru would be able to exercise the sovereign rights to which it is entitled, only starting 370 kilometres North of the border with Chile – that is North of the department of Arequipa; more precisely, as shown on **Figure 6.8**, it would enjoy sovereign rights extending only to 1.2 nautical miles at Santa Rosa (Tacna), 17 nautical miles at Vila Vila (Tacna), 25.4 nautical miles at Punta Sama (Tacna), 48.2 nautical miles at Punta Coles (Moquegua), 100 nautical miles at Punta Islay (Arequipa) and 120 nautical miles at Camaná (Arequipa); and,

(b) at the same time, Peru's maritime domain would also be deprived of an area of more than 28,000 square kilometres – the outer triangle – approximately equivalent to the area of countries such as Albania or Equatorial Guinea.

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[353] See also **Figure 7.4** in Vol. IV.

B. The *Ipso Facto* Sovereign Rights of Peru in the Area

7.25 As recalled in some detail in Chapter III above, a maritime zone lying less than 200 nautical miles from the coasts of the coastal State forms *ipso facto* part of the maritime domain of the latter. As a consequence, in the present case this means that the triangle X-Y-Z on **Figure 7.1**, which represents an area lying within 200 nautical miles from Peru's baselines as defined by Peru's Baselines Law[354], is an area over which Peru is entitled to exercise its exclusive sovereign rights. Since, by virtue of the customary rule codified in Article 76 of the 1982 Convention on the Law of the Sea, a coastal State is entitled in all cases and as a minimum to a continental shelf up to a limit of 200 nautical miles from its baselines even where the outer edge of the continental margin does not extend up to that distance, the area within the triangle thus constitutes an integral part of Peru's continental shelf.

7.26 The legal unacceptability of Chile's apparent position is further underlined by considerations of principle relating to the very nature of the continental shelf appertaining to a State. The continental shelf is the natural prolongation of the coastal State's land territory – a notion developed by the International Court of Justice[355] and reflected in Article 76, paragraph 1, of the 1982 Convention on the Law of the Sea. A mere glance at **Figure 2.1** shows that Peru's coastal frontage faces roughly southwest for practically all of its length, and it is a prolongation of the landmass lying behind that coast – or projection of that coast seaward – in that general southwest direction which is initially and in principle called for[356]. Chile's coastal frontage, on the other hand, runs approximately north-south and faces approximately due west, and it is a prolongation in that general direction which is called for in Chile's case.

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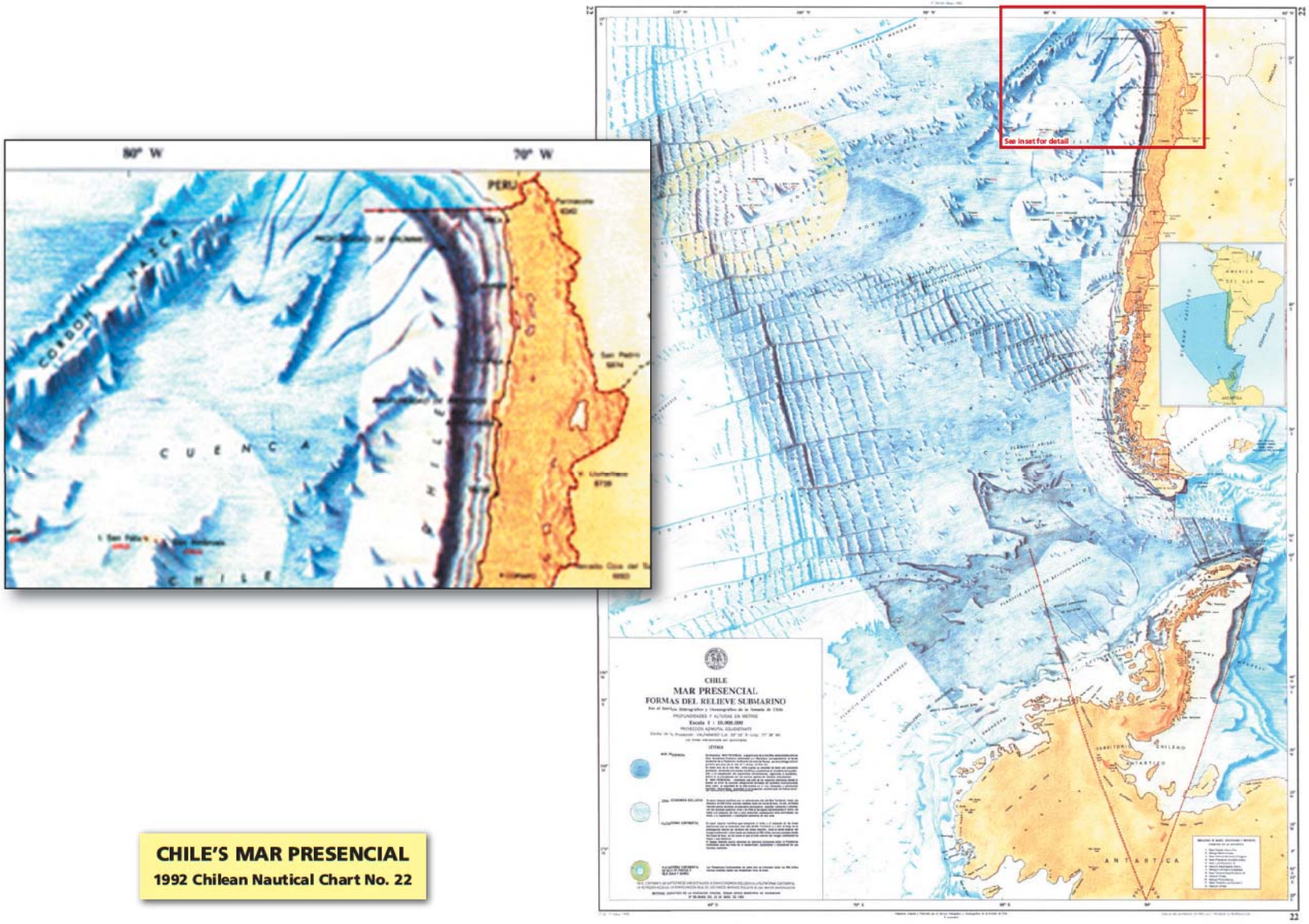
354 Annex 23.

355 See para. 3.9 above.

356 See paras. 2.2.-2.4 above.



CHILE'S MAR PRESENCIAL
1992 Chilean Nautical Chart No. 22

Figure 7.3

7.27 However, in the absence of a significant continental margin in the area relevant to this case[357], the Chilean claim cannot extend more than 200 nautical miles from its baselines, as is clearly expressed in Article 76, paragraph 1, of the 1982 Convention on the Law of the Sea[358] and, consequently, it can have no overlapping claim to a continental shelf beyond the line **X-Z** drawn on **Figure 7.1**[359]. And, as far as the EEZ is concerned, it follows clearly from the limpid drafting of Article 57 of the Convention, that such a zone "shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured".

7.28 In other words, since the geomorphological composition of the sea-bed and subsoil in the area is such that Chile cannot claim a continental shelf including areas lying more than 200 nautical miles from its baselines under Article 76 of the 1982 Convention on the Law of the Sea, Chile cannot claim any rights competing with those of Peru over the outer triangle – let alone can it unilaterally proclaim "presential rights" infringing the exclusive rights belonging to Peru in the area.

7.29 Moreover, in the present case Chile can invoke no agreement given by Peru, nor any formal relinquishment of Peru's sovereign rights, nor Peruvian acquiescence in the so-called "presential rights" claimed by Chile, which would infringe on its own sovereign and exclusive rights – such a relinquishment or acquiescence cannot, moreover, be presumed lightly[360]. On the contrary, Peru's *ipso facto* and exclusive rights over the area are confirmed by a number of elements[361].

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[357] See para. 3.7 above. See also **Figure 7.5**.

[358] Quoted above, para. 7.4.

[359] See para. 7.3 above.

[360] See: *Case Concerning Maritime Delimitation in the Black Sea, I.C.J. Judgment of 3 February 2009*, paras. 71-76.

[361] See paras. 4.140-4.143 above.

7.30 Any suggestion that Peru would have agreed to a limitation of its sovereign rights in the area that Chile includes in its "Presential Sea", is irreconcilable with the general spirit which has inspired the Parties since they were among the main initiators of the mobilization against the traditional Law of the Sea which led to a spectacular widening of the rights of coastal States. It is inconceivable that Peru would have agreed that the outer triangle, over which it possesses exclusive sovereign rights, could be considered part of the high seas, still less an area subject to the regulation and enforcement measures of another State. To the contrary, and totally in line with the basic concern which has guided these countries since the 1950s in their maritime aspirations – namely the protection of the fishing resources and other economic resources in front of their coasts – it seems hard to imagine how such practice of creating an area of seas belonging to nobody by means of self-restraint by one of the Parties, could have served their cause.

7.31 It is important to keep in mind that the main, if not the sole, purpose of the 1952 Declaration of Santiago was to mutually recognize claims to sovereignty over maritime areas extending up to a minimum distance of 200 nautical miles from the coasts. In this instrument Chile has accepted that the Peruvian claim legitimately extended up "to a minimum distance of 200 nautical miles" from its coasts[362].

7.32 For its part, as shown above in this Memorial[363], Peru has constantly upheld, including in its Constitution, that its exclusive sovereign rights and jurisdiction extend up to 200 nautical miles distance[364].

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[362] See para. II of the 1952 Declaration of Santiago. Annex 47.

[363] See paras. 3.11-3.23 above.

[364] See Article 98 of the 1979 Constitution and Article 54 of the 1993 Constitution, reproduced at paras. 3.16-3.17 above.

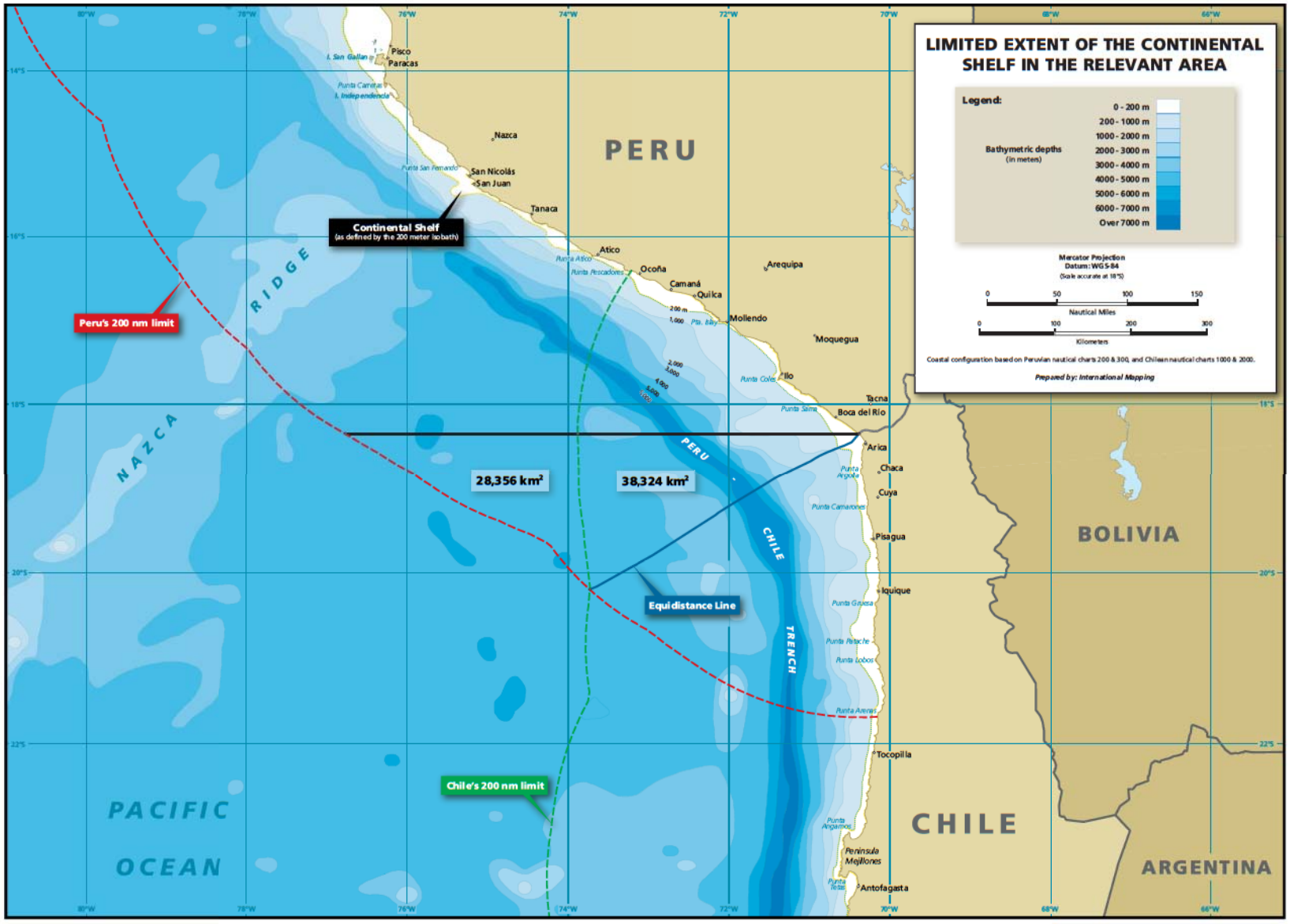
LIMITED EXTENT OF THE CONTINENTAL SHELF IN THE RELEVANT AREA
Legend:
Bathymetric depths (in meten)
0 - 200 m
200 - 1000 m
1000 - 2000 m
2000 - 3000 m
3000 - 4000 m
4000 - 5000 m
5000 - 6000 m
6000 - 7000 m
Over 7000 m
Mercator Projection
Datum: WGS-84
(Scale accurate at 18°S)
Nautical Miles
Kilometers
Coastal configuration based on Peruvian nautical charts 200 & 300, and Chilean nautical charts 1000 & 2000.
Prepared by: International Mapping
PERU
BOLIVIA
CHILE
ARGENTINA
PACIFIC OCEAN
NAZCA RIDGE
PERU CHILE TRENCH
Continental Shelf
(as defined by the 200 meter isobath)
Peru's 200 nm limit
Chile's 200 nm limit
Equidistance Line
28,356 km²
38,324 km²
Pisco
Paracas
Nazca
San Nicolás
San Juan
Tanaca
Atico
Ocoña
Camaná
Quilca
Arequipa
Mollendo
Moquegua
Ilo
Tacna
Boca del Río
Arica
Chaca
Cuya
Pisagua
Iquique
Tocopilla
Antofagasta
Península Mejillones
80°W
78°W
76°W
74°W
72°W
70°W
68°W
66°W
14°S
16°S
18°S
20°S
22°S

Figure 7.5

7.33 Peru has coherently and firmly maintained its position in its relations with Chile as well as with third States. Just to give two examples:

- In November 1954, five whaling ships belonging to the shipowner Aristotle Onassis, covered by a Lloyd's insurance policy, were arrested by Peruvian warships 126 nautical miles from the Peruvian coast. In answer to a Note of protest from the British Embassy in Lima, the Ministry of Foreign Affairs of Peru replied on 25 November by explaining that the decisions were "acts of sovereignty in relation to which [the Peruvian] Government cannot accept any reservations or complaints"[365]. Finally, following a decision by the Harbour Authority of Paita[366], the ships were released after the payment of a fine of US$ 3 million;

- In January 1955, a factory ship, the *Tony Bay*, and other tuna clippers also under American flag were fined for unauthorized fishing within the 200-mile zone. Here again, the Peruvian Minister of Foreign Affairs rejected a protest of the United States Government by stating, *inter alia*, that:

> "The criterion of Peru for the determination of the Maritime Zone … does not correspond to necessities of military or police nature, but to the defence of a richness useful to mankind, that is found in maritime area adjacent to its territory and incorporated to national welfare by virtue of nature."[367]

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[365] On this episode, see also above, para. 4.83 *ff.* See *e.g.*: Note (M).-6/17/41 of 25 November 1954 from the Minister of Foreign Affairs to the Ambassador of Great Britain, quoted in Ministerio de Relaciones Exteriores (1955), *op. cit.*, pp. 148-149. (Spanish text: "actos de soberanía respecto a los cuales mi Gobierno no puede aceptar ni reservas ni reclamaciones."). Annex 98.

[366] Harbour Autority of Paita, Peru, Decision of 26 November 1954, *ibid.*, pp. 149-153. (English translation in: The *American Journal of International Law*, Vol. 49, No. 4, 1955, October, pp. 575-577).

[367] Ministerio de Relaciones Exteriores (1955), *op. cit.*, p. 176. Annex 98. On this episode, see also García Sayán, Enrique: *Derecho del mar: las 200 millas y la posición peruana*. Lima, 1985, p. 35.

Spanish text reads as follows:

> "El criterio del Perú para la determinación de la Zona Marítima … no corresponde a necesidades de orden militar o policial, sino de defensa de una riqueza útil a la humanidad, que se encuentra en área marítima adyacente a su territorio e incorporada al patrimonio nacional por obra de la naturaleza."

7.34 When Chile published (on 23 August 2004) Decree No. 123, dated 3 May 2004, on the "Policy for the Use of National Ports by Foreign Flag Vessels that Fish in the Adjacent High Seas"[368], Peru sent a diplomatic note to the Chilean Ministry of Foreign Affairs, in which it made a formal reservation in relation to this Decree "in all of which it might affect Peruvian rights and interests in the maritime spaces" to which said Decree makes reference[369]. This note added that: "Peru maintains its reservations with regard to any legal act, including conventions or agreements and political acts by the Republic of Chile that affect Peruvian sovereignty, jurisdiction and interests in its maritime space."[370]

7.35 The Peruvian position is also recorded in a Memorandum dated 9 March 2005, handed over to the Chilean Ambassador to Peru, in relation to the entry into force of the "Galapagos Agreement" of August 2000:

> "The Peruvian Delegation on that occasion informed the representatives of the Government of Chile that Peru could not participate in the Galapagos Agreement because if the outer limit of Peru was not recognised, there would be a possibility for third countries to consider part of this outer limit as belonging to the high seas. Taking into account that the scope of application of the Galapagos Agreement is a high seas area adjacent to the

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368 Annex 42.

369 Note No. 5-4-M/281 of 4 November 2004 from the Embassy of Peru to the Ministry of Foreign Affairs of Chile. Annex 81. (Spanish text: "en todo aquello que pueda afectar los derechos e intereses peruanos en los espacios marítimos").

370 *Ibid.* (Spanish text: "Perú mantiene su reserva sobre cualquier acto jurídico, incluidos convenios o acuerdos, y actos políticos de la República de Chile, que afecten la soberanía, jurisdicción e intereses del Perú en su espacio marítimo.").

> zone of sovereignty and jurisdiction of the coastal States, it is necessary for the countries that benefit from this Agreement to have no misunderstanding whatsoever regarding the extension of the maritime spaces of sovereignty and jurisdiction of each of the coastal States and the area of application of the aforementioned agreement. We are confident that the sister Republic of Chile will accede to the Peruvian petition." [371]

Spanish text reads as follows:

> "La delegación peruana manifestó, en esa oportunidad, a los representantes del Gobierno de Chile que el Perú no podría participar en el Acuerdo de Galápagos ya que si no se reconoce el límite exterior del Perú cabría la posibilidad que terceros países consideren parte de este límite exterior como alta mar. Teniendo en cuenta que el ámbito de aplicación del Acuerdo de Galápagos es un área de alta mar aledaña a la zona de soberanía y jurisdicción de los Estados ribereños, es necesario que los países que se beneficien de este acuerdo no tengan malentendido alguno sobre la extensión de los espacios marítimos de soberanía y jurisdicción de cada uno de los Estados costeros y el área de aplicación del mencionado acuerdo. Se tiene la confianza que la hermana República de Chile accederá a la petición peruana."

7.36 Peru has systematically opposed any attempt to treat its outer triangle as part of the high seas during the negotiations for the creation of a regional fishing organization that would operate in the high seas. Thus, in a Note dated 29 August 2005 sent to the Chilean Minister of Foreign Affairs, the Peruvian Embassy in Chile stated:

> "Facsimile No. 13 dated June 10 of the present year, sent by the Chilean National Section of the Permanent Commission for the South Pacific to the Secretary General (a.i.) of said organization, refers to the area of application of the future agreement for the administration of fisheries in the South Pacific, and points out as one of its limits parallel 18°21'03" south

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[371] Memorandum of 9 March 2005, from the Ministry of Foreign Affairs of Peru to the Ambassador of Chile. Annex 82.

> latitude that, as that Honourable Government knows, is related with the controversy on maritime boundary that exists between Peru and Chile.
>
> In this sense, the Embassy of Peru reiterates its persistent position regarding the pending maritime delimitation between both countries and thus makes reservation over any act, convention or agreement that may affect Peruvian sovereignty, jurisdiction or interests in its maritime space"[372].

Spanish text reads as follows:

> "Facsímil No. 13, de 10 de junio del presente año, enviado por la Sección Nacional chilena de la Comisión Permanente del Pacífico Sur al Secretario General (e) de dicha organización, contiene una mención al área de aplicación del futuro convenio para la administración pesquera en el Pacífico Sur, y señala como uno de sus límites el paralelo 18°21'03" de latitud sur que, como conoce ese Ilustrado Gobierno, guarda relación con la controversia sobre límite marítimo que existe entre el Perú y Chile.
>
> En ese sentido, la Embajada del Perú reitera su persistente posición sobre la delimitación marítima pendiente entre ambos países y por tanto hace reserva sobre cualquier acto, convenio o acuerdo que pueda afectar la soberanía, jurisdicción e intereses del Perú en su espacio marítimo."

7.37 These episodes bear clear witness to the firmness of Peru's intention not to relinquish its sovereign rights in the area.

7.38 In view of this consistent pattern of conduct, it is impossible to allege that Peru has either by agreement or by its conduct abandoned its *ipso facto* exclusive rights on the area extending beyond 200 nautical miles from the Chilean baselines but within the distance of 200 nautical miles from the Peruvian baselines which clearly falls in the exclusive jurisdiction of Peru.

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[372] Note 5-4-M/276 of 29 August 2005, from the Embassy of Peru to the Ministry of Foreign Affairs of Chile. Annex 83.

CHAPTER VIII

SUMMARY

In accordance with Practice Direction II, Peru presents the following summary of its reasoning.

8.1 This case concerns *(a)* the delimitation of the maritime areas between Peru and Chile and *(b)* Peru's right to maritime areas lying within 200 nautical miles of its coast but further than 200 nautical miles from Chile's coast – the outer triangle.

8.2 The jurisdiction of the Court is based on Article XXXI of the Pact of Bogotá to which both Peru and Chile are Parties.

8.3 There is no pre-existing agreement between the Parties effectuating a maritime delimitation between them. Neither the 1952 Declaration of Santiago, nor the 1954 Agreement on a Special Zone purported to effectuate a maritime delimitation between Peru and Chile. The Parties to this case engaged in no negotiations at the time regarding their maritime boundary; the instruments in question were not delimitation agreements; and no course of a delimitation line with specific co-ordinates, a technical datum, a defined endpoint, or an illustrative map was ever discussed or agreed by the Parties at that time.

8.4 The primary purpose of the 1952 Declaration of Santiago was to establish, on a provisional basis between Peru, Chile and Ecuador, and as a common maritime policy, a minimum 200-nautical-mile outer limit to their exclusive maritime jurisdiction in order to conserve and safeguard the marine resources lying within those limits from fishing by other States or their private entities.

8.5 The purpose of the 1954 Agreement on a Special Zone was to reduce friction between fishermen on small boats and thereby to avoid unnecessary tension between the States Parties while they were focused on defending their claims towards third countries in an exercise of regional solidarity. The 1954 Agreement on a Special Zone did not modify or derogate from the 1952 Declaration of Santiago.

8.6 In 1968-1969, Peru and Chile arranged for the construction of two light beacons in the vicinity of the starting-point of their land boundary. This exercise related to provisional arrangements regarding local fishermen and was designed as a bilateral measure of a pragmatic nature to enable small vessels operating close to the coast to avoid becoming entangled in fishing incidents.

8.7 From 1986 onwards, following the conclusion of the 1982 Convention on the Law of the Sea, Peru sought to initiate discussions with Chile for the delimitation of a maritime boundary between the two States. These initiatives did not bear fruit: Chile refused to engage in any negotiations.

8.8 Throughout the period from 1952 to 1992, the Parties issued no official maps indicating that any maritime boundary existed between them. It was only in 1992, some 40 years after the signature of the 1952 Declaration of Santiago, that Chile unilaterally, and in a self-serving fashion, began to amend its cartography to show a "maritime boundary" with Peru along the parallel of latitude extending from the initial point on the land boundary. This was first done in connection with Chile's articulation of a claim to the "Presential Sea". In contrast, when Chile delimited its maritime boundary with Argentina in 1984, the Parties to that agreement agreed a list of geographical co-ordinates and a map which depicted that boundary.

8.9 In these circumstances, and given Chile's refusal to negotiate the issue, the delimitation of the maritime zones between the Parties remains to be effected. That task falls to the Court in this case.

8.10 In the light of the fact that Peru is not a Party to the 1982 Convention on the Law of the Sea while Chile is, the applicable law in this case is customary international law as developed mainly by the jurisprudence of the Court with respect to maritime delimitation. In this connection, the delimitation provisions of the 1982 Convention, while not binding as a source of conventional law *per se*, reflect well-established principles of customary international law.

8.11 The primary aim of maritime delimitation is to achieve an equitable result by means of the application of equitable principles. This aim is reflected in the "equitable principles/relevant circumstances" or "equidistance/special circumstances" rule.

8.12 Application of this rule involves a two-step process. *First*, a provisional equidistance line is plotted which is a line, every point of which is equidistant from the nearest points on the baselines of the Parties from which the breadth of the outer limit of their maritime zones is measured. *Second*, the relevant circumstances characterizing the area to be delimited are assessed in order to determine whether any adjustment, or shifting, of the equidistance line is called for to arrive at an equitable result. The equitable nature of the delimitation line that emerges as a result of the application of the two initial steps in the process is then tested, using the 'proportionality' test.

8.13 The delimitation begins from the starting-point on the Parties' land boundary which was agreed by the Parties in 1929-1930. Thereafter, the construction of the equidistance line is a straightforward exercise in the light of the geographical characteristics of the Parties' relevant coasts. Given the uncomplicated nature of the Parties' coasts, there are no reasons that justify an adjustment being made to the equidistance line in this case. A delimitation carried out pursuant to the equidistance method produces an equal division of the overlapping entitlements of the Parties and results in no undue encroachment or cut-off effect on the maritime projection of each Party's respective coast.

8.14 The equidistance line fully satisfies the test of proportionality by allocating to each of the Parties maritime areas commensurate with the length of their relevant coasts fronting on the area to be delimited. For all of these reasons, the equidistance line produces an equitable result in this case.

8.15 Contrary to Chile's so-called "Presential Sea" claim, Peru possesses exclusive sovereign rights over the maritime areas situated within 200 nautical miles of its baselines that are more than 200 nautical miles from Chile's baselines.

SUBMISSIONS

For the reasons set out above, the Republic of Peru requests the Court to adjudge and declare that:

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

(2) Beyond the point where the common maritime border ends, Peru is entitled to exercise exclusive sovereign rights over a maritime area lying out to a distance of 200 nautical miles from its baselines.

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

20 March 2009.

ALLAN WAGNER
Agent of the Republic of Peru

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LIST OF DOCUMENTS DEPOSITED WITH THE REGISTRY

OFFICIAL INSTRUMENTS OF PERU

1. Supreme Decree of 6 September 1833.
2. Supreme Decree of 5 August 1840.
3. Supreme Decree of 15 November 1921.
4. Supreme Decree of 13 November 1934.
5. General Order of the Navy No. 10 of 9 April 1940, Regulation of Captaincies and National Merchant Navy.
6. Supreme Decree No. 781 of 1 August 1947.
7. Supreme Decree No. 21 of 31 October 1951, Regulation of Captaincies and National Merchant Navy.
8. Law No. 11780 of 12 March 1952, Petroleum Law.
9. Supreme Resolution No. 23 of 12 January 1955, The Peruvian 200-Mile Maritime Zone.
10. Legislative Resolution No. 12305 of 6 May 1955.
11. Supreme Decree No. 570 of 5 July 1957.
12. Law No. 15720 of 11 November 1965, Law on Civil Aeronautics.
13. Decree Law No. 17752 of 24 July 1969, General Law on Waters.
14. Decree Law No. 17824 of 23 September 1969, Corps of Captaincies and Coastguard.
15. Decree Law No. 18225 of 14 April 1970, Providing for the Adoption of the General Mining Law.
16. Decree Law No. 18810 of 25 March 1971, General Fisheries Law.
17. Law No. 25977 of 7 December 1992, General Fisheries Law .
18. Law No. 26620 of 30 May 1996, Law on the Control and Supervision of Maritime, Fluvial and Lacustrine Activities.
19. Law No. 27261 of 9 May 2000, Law on Civil Aeronautics.

20. Supreme Decree No. 028-DE/MGP of 25 May 2001, Regulation of the Law on the Control and Supervision of Maritime, Fluvial and Lacustrine Activities.

21. Supreme Decree No. 047-2007-RE of 11 August 2007, Approval of the Chart of the Outer Limit – Southern Sector – of the Maritime Domain of Peru.

OFFICIAL INSTRUMENTS OF CHILE

22. Supreme Decree (M) No. 1.340 of 14 June 1941.

23. Presidential Declaration Concerning Continental Shelf of 23 June 1947.

24. Law No. 8.944 of 21 January 1948, Water Code.

25. Decree with Force of Law No. 292 of 25 July 1953, Fundamental Law of the Directorate General of Maritime Territory and Merchant Marine.

26. Supreme Decree No. 432 of 23 September 1954, Approval of the Declarations and Conventions between Chile, Peru and Ecuador agreed at the First Conference on Exploitation and Conservation of the Marine Resources of the South Pacific.

27. Decree No. 332 of 4 June 1963, Appointment of the Authority which Grants Fishing Permits to Foreign Flag Vessels in Chilean Jurisdictional Waters.

28. Decree No. 453 of 18 July 1963, Regulation of Permits for the Exploitation by Factory Ships in the Specified Zone.

29. Decree No. 519 of 16 August 1967, Approval of the Agreement Relating to a Special Maritime Frontier Zone.

30. Decree No. 416 of 14 July 1977, Establishing the Straight Baselines Between Parallels 41° S and 56° S, Traced in the Chart I.H.A. (Hydrographic Institute of the Navy) N 5 of 1977.

31. Law No. 18.302 of 16 April 1984, Law of Nuclear Security.

32. Law No. 18.565 of 13 October 1986, Amendment to the Civil Code Regarding Maritime Spaces.

33. Supreme Decree (M) No. 991 of 26 October 1987, Establishing the Jurisdiction of the Maritime Gobernations of the Republic and Establishing the Harbour Authorities and their Respective Jurisdictions.

34. Law No. 19.080 of 28 August 1991, Amendment to Law 18.892, General Law on Fisheries and Aquaculture.

35. Law No. 19.300 of 1 March 1994, General Environmental Law.

36. Supreme Decree No. 210 of 4 May 1998, Establishing Areas for the Management and Exploitation of Benthonic Resources for Region I.

37. Supreme Decree No. 598 of 15 October 1999, Applying Article No. 165 of the General Fishing and Aquaculture Law to the Swordfish.

38. Decree No. 123 of 3 May 2004, Approval of the Policy for the Use of National Ports by Foreign Flag Vessels that Fish in the Adjacent High Seas.

TREATIES

39. Treaty of Peace and Friendship between the Republics of Peru and Chile ("The 1883 Treaty of Ancón"). Signed at Ancón on 20 October 1883.

40. Agreement Relating to a Special Maritime Frontier Zone. ("The 1954 Agreement on a Special Zone"). Signed at Lima on 4 December 1954.

41. Complementary Convention to the Declaration of Sovereignty on the Two-Hundred-Mile Maritime Zone ("The 1954 Complementary Convention"). Signed in Lima on 4 December 1954.

42. Protocol of Accession to the Declaration on "Maritime Zone" of Santiago. Signed at Quito on 6 October 1955.

ACTS

43. Final Act of the Commission of Limits Containing the Description of Placed Boundary Markers of 21 July 1930.

44. Act of 5 August 1930.

45. Act of the First Session of the Juridical Affairs Commission of the First Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific of 11 August 1952.

46. Act of the Second Session of Commission I of the Second Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific of 3 December 1954.

47. Act of 12 April 1955: Agreement between Ecuador, Peru and Chile for a Joint Response to the United States and Great Britain on their Observations to the "Declaration of Santiago".

48. Document of 26 April 1968.

49. Execution Act of 13 November 1999.

DIPLOMATIC CORRESPONDENCE

50. Note No. 11 (152/8/48) of 6 February 1948, from the Ambassador of the United Kingdom to the Minister of Foreign Affairs of Peru.

51. Note No. 1030 of 2 July 1948, from the chargé d'affaires a.i. of the United States to the Minister of Foreign Affairs of Peru.

52. Note No. (SM)-6-3/64 of 11 May 1952, from the Minister of Foreign Affairs of Peru to the Ambassador of the United States of America.

53. Note No. 86 of 10 July 1952, from the Ambassador of Chile to the Minister of Foreign Affairs of Peru.

54. Note No. (N): 6/17/14 of 12 April 1955, from the Minister of Foreign Affairs of Peru to the Ambassador of the United Kingdom.

55. Note No. (M): 6/3/29 of 12 April 1955, from the Minister of Foreign Affairs of Peru to the chargé d'affaires a.i. of the United States.

56. Memorandum of the Embassy of Peru in Chile of 26 May 1965.

57. Memorandum of the Ministry of Foreign Affairs of Chile of 6 October 1965.

58. Memorandum of the Embassy of Peru in Chile of 3 December 1965.

59. Note 6-4/8 of 7 February 1967, from the Minister of Foreign Affairs of Peru to the Ambassador of Chile.

60. Note No. (J) 6-4/9 of 6 February 1968, from the Ministry of Foreign Affairs of Peru to the chargé d'affaires a.i. of Chile.

61. Note No. 81 of 8 March 1968, from the chargé d'affaires a.i. of Chile to the Minister of Foreign Affairs (in charge).

62. Note No. (J) 6-4/19 of 28 March 1968, from the Secretary General of Foreign Affairs of Peru to the chargé d'affaires a.i. of Chile.

63. Note No. (J) 6-4/43 of 5 August 1968, from the Secretary General of Foreign Affairs to the chargé d'affaires of Chile.

64. Note No. 242 of 29 August 1968, from the Embassy of Chile to the Ministry of Foreign Affairs of Peru.

65. Diplomatic Memorandum annexed to Note 5-4-M/147 of 23 May 1986, from the Embassy of Peru to the Ministry of Foreign Affairs of Chile.

66. Note RE (GAB) No. 6-4/113 of 20 October 2000, from the Ministry of Foreign Affairs of Peru to the Embassy of Chile.

67. Note No. 7-1-SG/005 of 9 January 2001, from the Permanent Mission of Peru to the Secretary-General of the United Nations. Statement by the Government of Peru concerning parallel 18º21'00", referred to by the Government of Chile as the maritime boundary between Chile and Peru.

68. Note No. 5-4-M/281 of 4 November 2004, from the Embassy of Peru to the Ministry of Foreign Affairs of Chile.

69. Memorandum of 9 March 2005, from the Minister of Foreign Affairs of Peru to the Ambassador of Chile.

70. Note 5-4-M/276 of 29 August 2005, from the Embassy of Peru to the Ministry of Foreign Affairs of Chile.

71. Note No. 76 of 13 September 2005, from the Ministry of Foreign Affairs of Chile to the Embassy of Peru.

72. Note No. 18934 of 28 November 2005, from the Minister of Foreign Affairs of Chile to the Ambassador of Peru.

OTHER DOCUMENTS

73. Joint Report to the Arbitrator, Tacna-Arica Arbitration, by General John J. Pershing, First President, and Major General William Lassiter, Second President, of the Plebiscitary Commission, Tacna-Arica Arbitration.

74. Agreement to Determine the Boundary Line and Place the Corresponding Boundary Markers at the Points in Disagreement in the Peruvian-Chilean Limits Demarcation Joint Commission of 24 April 1930 (Identical Instructions Sent to the Delegates).

75. Message from the Chilean Executive to the Congress for the Approval of the 1952 Agreements. Santiago, 26 July 1954.

76. Report of the Foreign Affairs Committee of the Chilean Senate Regarding the Project that Proposes the Approval of the 1952 Agreements. Approved in session of 3 August 1954.

77. Report No. 41 of the Foreign Affairs Committee of the Chilean Deputies Chamber. Approved in session of 31 August 1954.

78. Official Letter No. (M)-3-O-A/3 of 7 February 1955 from the Ministry of Foreign Affairs of Peru.

79. Report of the Foreign Affairs Committee of the Congress of Peru on the Agreements and Conventions signed by Peru, Chile and Ecuador in Santiago, on 18 August 1952; and in Lima, 4 December 1954.

80. Declaration of the Head of the Chilean Delegation contained in the Act of the Closing Ceremony of the Conference on the Exploitation and Conservation of Marine Resources of the South Pacific of 19 August 1952.

81. Memoria del Ministro de Relaciones Exteriores (28 de julio de 1954 - 28 de julio de 1955). Lima, Talleres Gráficos P. L. Villanueva, 1955.

82. Memoria del Ministro de Relaciones Exteriores (28 de julio de 1955 - 28 de julio de 1956). Lima, Talleres Gráficos P. L. Villanueva, 1956.

83. Statement made by Presidents Lanusse of Argentina and Allende of Chile. "Salta Declaration" of 24 July 1971.

84. Joint Declaration of Presidents Juan Velasco Alvarado of Peru and Salvador Allende of Chile, 3 September 1971.

85. Joint Declaration of the Ministers of Foreign Affairs of Peru and Chile, 16 June 1978.

86. Official Communiqué of the Ministry of Foreign Affairs of Chile of 13 June 1986.

87. List of Geographical Co-ordinates Deposited by Chile with the Secretary-General of the United Nations on 21 September 2000.

88. Declaration of Santiago of 14 August 2002.

89. Joint Communiqué of the Ministers of Foreign Affairs of Peru and Chile, Rio de Janeiro, 4 November 2004.