

PERU V. CHILE

A Case Summary for the
Maritime Dispute Resolution Project



U.S.-ASIA LAW INSTITUTE
NEW YORK UNIVERSITY SCHOOL OF LAW

Maritime Dispute Resolution Project

Maritime Dispute *(Peru v. Chile)*

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A research project of the
U.S.-Asia Law Institute

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** The views expressed herein are those of the author, and do not necessarily reflect the views of the Department of State or any other Agency of the United States Government.

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Project Overview

This case summary was prepared as part of the U.S.-Asia Law Institute's Maritime Dispute Resolution Project. The institute began the project in 2018 in order to better understand the circumstances in which interstate maritime disputes are successfully resolved and distill lessons for governments.

The two main questions the project seeks to answer are:

- When are international institutional dispute resolution mechanisms effective in resolving maritime disputes?
- What insights can be applied to the maritime disputes in East Asia?

To address these questions, leading international lawyers and legal scholars held workshops to analyze selected disputes from around the world. This and other case studies were prepared for the workshops and are based on the official records.

Citation:

Maritime Dispute (Peru v Chile) ICJ GL No. 137, Judgment [2014] I.C.J. Rep. 4, ICGJ 473 (ICJ 2014), 27th January 2014, International Court of Justice [ICJ]

Section I – Background and Summary of the Case

Starting in 1947, nearly twenty years after establishing and demarcating their land border, Peru and Chile each unilaterally asserted certain maritime claims extending 200 nautical miles (M) off their Pacific shores, including claims to sovereignty with respect to natural resources of the water column and continental shelf. These novel claims drew protest from various third states as contrary to international law, both for reasons that would still apply today (such as their assertion of “sovereignty” beyond the limits of the territorial sea) as well as for reasons that no longer apply (given later developments in international law, including the advent of the exclusive economic zone). Between themselves, however, Peru and Chile did not object to each other’s claims and, on the contrary, developed various instruments starting in the early 1950s to reinforce these claims in solidarity vis-à-vis third states. To some degree they also addressed boundary-related aspects of the claims, including about where vessels from each country would be allowed to fish.

By 2000, it had become clear that the countries disagreed as to whether they had established a maritime boundary in these fish-rich waters. In 2008, based on the dispute settlement provisions in the Pact of Bogota,¹ Peru initiated this case against Chile before the International Court of Justice (ICJ, or Court) to resolve the dispute.

Peru argued that no agreed maritime boundary existed and that the Court should delimit an equidistance-based boundary line. Chile argued that the maritime boundary had been established in a 1952

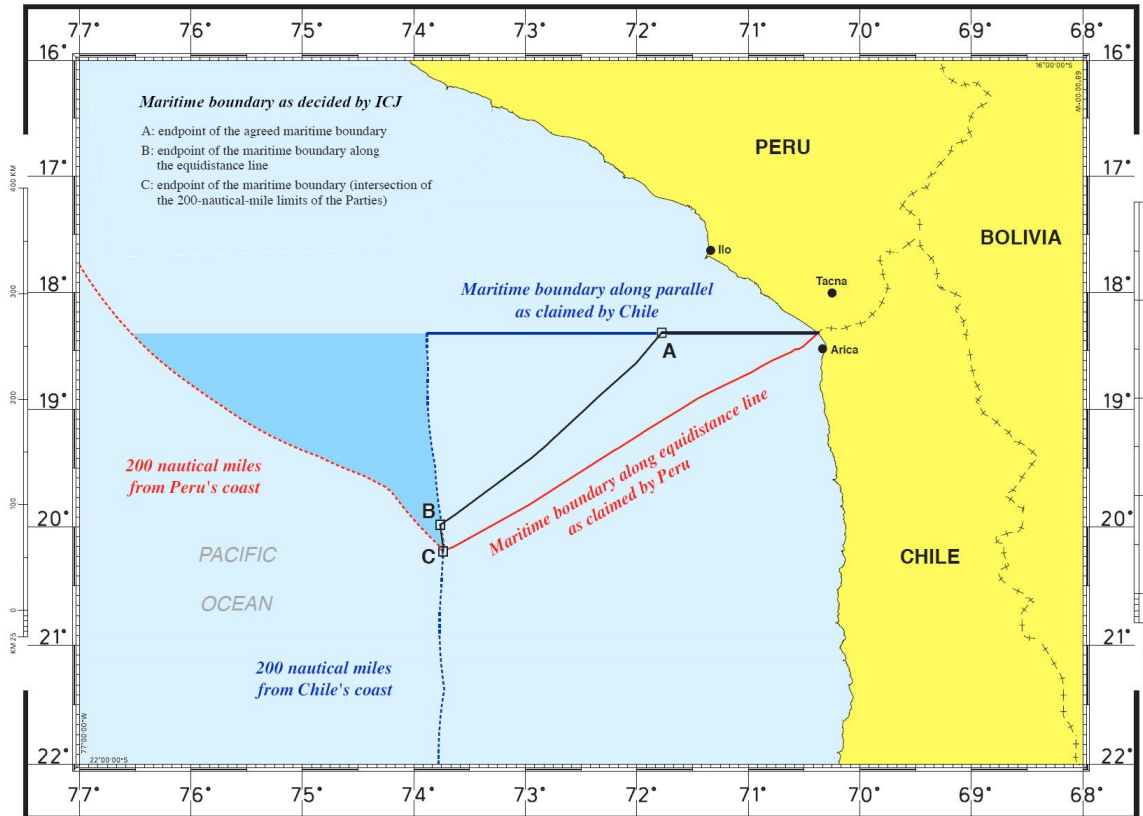
¹ Article XXXI of the American Treaty on Pacific Settlement, signed on 30 April 1948.

treaty (the 1952 Santiago Declaration²) and had been further reinforced by various subsequent agreements. According to Chile, this maritime boundary ran due west for at least 200 M along the parallel of latitude that intersects “Boundary Marker No. 1,” which demarcates the parties’ agreed land border. In Chile’s view, Peru had no maritime entitlements south of that line, even in areas beyond 200 M from Chile’s coast but within 200 M of Peru’s.

The Court agreed with neither party’s argument in full. In the view of various majorities of the judges, voting 15-1 or 10-6 depending on the issue, none of the treaties cited by the parties established a maritime boundary between them—but certain provisions did reflect that a *tacit* agreement existed between the parties on an all-purpose maritime boundary along the parallel of latitude running through Boundary Marker No. 1. The Court further determined that this tacitly agreed boundary extended only 80 M from shore. Seaward of that point, no maritime boundary had been established by the parties, so the Court applied a variation of its standard three-step approach to delimit an equidistance-based boundary measured from relevant portions of the parties’ coasts.

² Declaration on the Maritime Zone, signed by Chile, Ecuador and Peru, in Santiago on 18 August 1952.

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The Court's line connects the coast to points A, B, and C on the above illustration, which overlays two of the Court's sketch maps to compare the Court's boundary line to those claimed by each country.

Section II – Summary of Key Procedural Steps

The two countries fought a war in 1879-83, in which Chile seized land that was previously Peru's. They did not formally end the war

until the 1929 Treaty of Lima,³ which, among other provisions, established an agreed land border. When each country made sovereignty claims in 1947 to maritime areas extending 200 M offshore, contemporaneous international law neither recognized the claims nor provided a basis for boundary delimitation between them. Various subsequent agreements between the parties (many done trilaterally with Ecuador, which made similar 200 M claims), primarily concerning fishing, relied on parallels of latitude extending due west from the land boundary terminus, or from the most seaward physical marker of it, and the countries appear to have treated the parallel of latitude at least in practice as the lateral limit of each country's maritime zone. These agreements were concluded in the early 1950s and late 1960s.

Both Peru (1968) and Chile (1974) ratified the multilateral Pact of Bogota. Under its Article XXXI, States Parties recognize the compulsory jurisdiction of the ICJ over all disputes of a juridical nature that arise among them concerning certain matters, including the interpretation of a treaty or any question of international law.

With subsequent attention to equidistance-based delimitation in the 1970s negotiations of the Law of the Sea Convention, Peru evidently came to see a boundary along a parallel of latitude as inequitable. In 1986 Peru's ambassador to Chile requested "formal and definitive delimitation of maritime spaces," though the parties disagree whether that communication was intended to mean boundaries needed to be agreed in the first instance or rather that an existing boundary needed to be re-negotiated.

³Treaty for the Settlement of the Dispute regarding Tacna and Arica, signed on 3 June 1929.

Peru appears not to have raised the matter with Chile at the diplomatic level again until October 2000. In January 2001, Peru submitted a notification to the UN that it did not agree with Chile's understanding of the maritime boundary. In July 2004, the Court notes, "Peru described the situation as being one in which exchanges between the Parties had revealed 'totally dissenting and opposed juridical positions about the maritime delimitation which, in accordance with international law, evidence a juridical dispute.'" The next month, Chile registered with the UN a 1954 Special Maritime Frontier Zone Agreement which had entered into force in 1967 (and which provided much of the evidence for the Court's ultimate determination that the parties had tacitly agreed on a boundary). In 2008, Peru initiated this case at the ICJ. These recent actions, however, took place in the context of generally improving political cooperation and increasing economic ties between the two countries. Before the judgment was issued, both sides committed at high political levels to comply with the Court's decision.

Section III – Summary of Key Substantive Issues

The Court addressed three principal issues in the case: (1) whether there is an agreed maritime boundary; (2) the starting point on the coast of the maritime boundary; and (3) the course of the maritime boundary to the extent it had not already been agreed by the parties.

1. Whether there is an agreed maritime boundary

The Court began its analysis with an examination of various declarations and agreements cited by the parties. The countries' respective claims in 1947 to sovereignty extending 200 M from shore, the Court found, did not reflect a shared understanding of particular lateral boundaries on those claims. Although Chile rested its arguments in the case largely on the 1952 Santiago Declaration,

and in particular a provision in it using the parallel of latitude to limit certain maritime zones around islands, the Court found that neither this instrument nor any other cited by the parties established an agreed maritime boundary between the two parties. Of particular significance to the Court, however, was the 1954 Special Maritime Frontier Zone Agreement, which included preambular language about “violations of the maritime frontier” as well as a substantive provision establishing for certain narrow fisheries-enforcement purposes a special zone “at a distance of [*a partir de*] 12 nautical miles from the coast, extending to a breadth of 12 nautical miles on either side of the parallel which constitutes the maritime boundary between the two countries.” The Court did not view these provisions as themselves establishing a maritime boundary, but concluded that they did “acknowledge in a binding international agreement that a maritime boundary already exists.” Citing its *Nicaragua v. Honduras*⁴ standard that, at least in the context of establishing permanent boundaries, “[e]vidence of a tacit legal agreement must be compelling,” the Court considered that this 1954 agreement is “decisive in this respect” and “cements the tacit agreement.” The Court found further acknowledgment of an already existing maritime boundary in a 1968-69 agreement between the countries, pursuant to which they placed two lighthouses on the same line of latitude as Boundary Marker No. 1 to visually “materialize the parallel of the maritime frontier” for vessels at sea.

None of these instruments, however, indicated either the nature or the extent of the tacitly agreed maritime boundary. As for its nature, Chile contended that the boundary is an all-purpose one, while Peru

⁴ Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (*Nicaragua v. Honduras*), Judgment, I.C.J. Reports 2007 (II), p. 735, para. 253.

argued from the scope and nature of the 1954 Special Maritime Frontier Zone Agreement that the boundary concerns only coastal fisheries enforcement and navigation. A majority of the Court determined, without extensive analysis and with at least five judges disagreeing, that the boundary acknowledged in that 1954 agreement is an all-purpose one, based on the context of the 1947 proclamations and the 1952 Santiago Declaration, which concerned claims to the water column, seabed, and subsoil without relevant distinction.

In determining the extent of the tacitly agreed boundary, the Court did not agree with Chile's position that it extended to at least 200 M. Instead, it found that the evidence at its disposal did not allow a conclusion that the agreed boundary extended beyond 80 M along the parallel from its starting point. The majority acknowledged that the evidence before the Court did not provide precise information as to the agreed boundary's exact extent, and never explained how it arrived at the figure of 80 M in particular. This distance appears to be based generally on a finding that contemporaneous small vessels typically fished within 60 M of the coast, and that the parties' mere acknowledgement in 1954 that a maritime boundary existed is "too weak a basis for holding that it extended far beyond the Parties' extractive and enforcement capacity at that time." The Court also appears to have placed some weight on the state of international law at the time, under which (the parties acknowledged in the proceedings) claims extending 200 M from shore would not initially have been enforceable against third parties. The Court examined myriad other potential factors (including the parties' other agreements, their legislative and enforcement practice, their diplomatic interactions, and their positions in negotiations with Bolivia and during the third United Nations Conference on the Law of the Sea), but generally deemed them insignificant or irrelevant for adjusting the 80 M figure.

2. The starting-point of the agreed maritime boundary

Having determined that a tacit agreement existed that a maritime boundary extended along a parallel of latitude, the Court addressed the parties' competing arguments as to which parallel that is. Both countries agree that the 1929 Treaty of Lima established the land boundary starting "from a point on the coast to be named 'Concordia', ten kilometers to the north of the bridge over the river Lluta," but they disagree whether this means Boundary Marker No. 1 (which the parties had jointly placed several hundred meters inland to avoid its destruction by ocean waters) or whether the ten-kilometer arc continues southwest of the marker until it hits the low-water line on the coast. The difference is slight (several dozen or several hundred meters, depending on the source), but also implicates a sovereignty dispute over a small (roughly 3.7-hectare) triangle of land between Boundary Marker No. 1 and the sea.

Finding the 1968-69 lighthouse arrangements "compelling evidence," the Court agreed with Chile that the relevant parallel was the one that ran through Boundary Marker No. 1 and the lighthouses aligned with it, such that the starting point for the maritime boundary is where that parallel intersects the low-water line. The Court made clear that it was deciding only the maritime boundary, however, and not the point where the land boundary begins. In this regard, disagreeing with Peru's arguments, the Court noted that it could be possible for the starting points of the land and maritime boundaries not to coincide, observing that "such a situation would be the consequence of the agreements reached between the Parties."

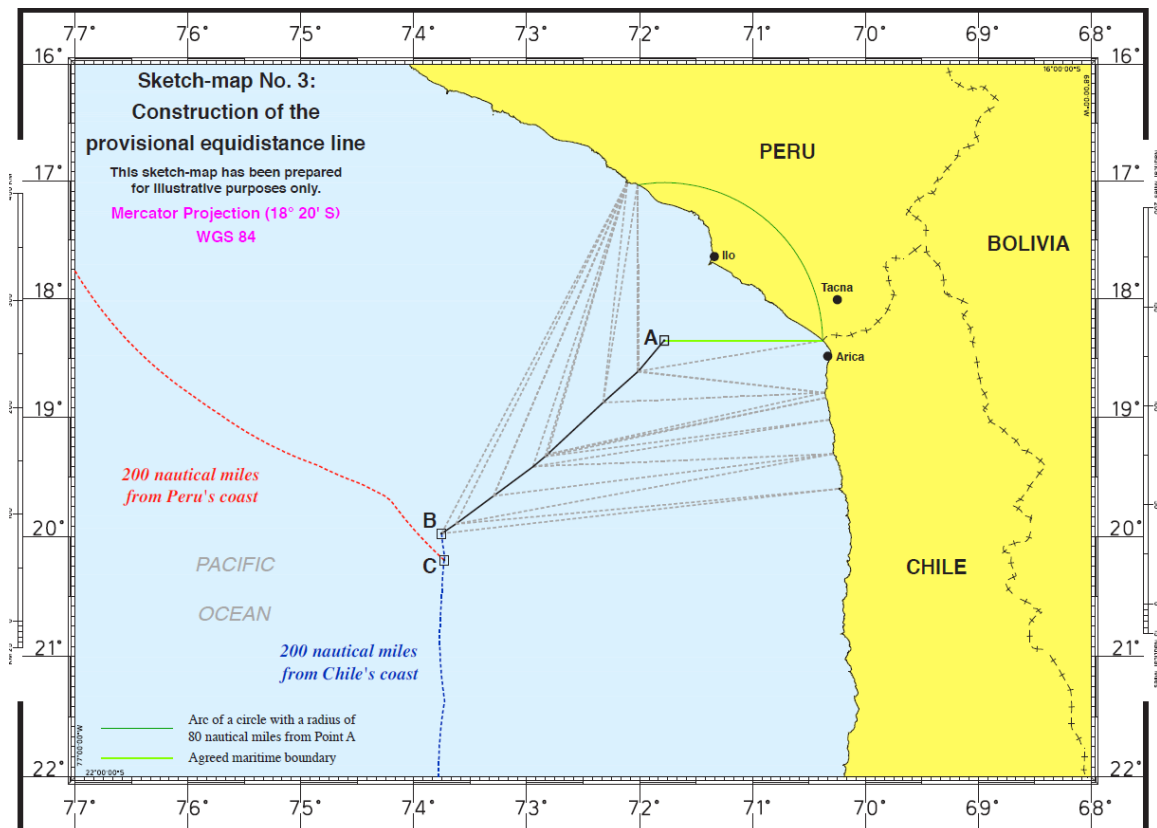
3. The course of the maritime boundary seaward of the tacitly agreed 80 M portion

With respect to the boundary beyond the point 80 M from shore along the parallel (“Point A”), neither party presented arguments directly on point. Peru had argued for the entire maritime boundary to be based on equidistance, while Chile had argued for the entire boundary to follow the parallel of latitude.

To delimit this seaward portion of the boundary, the Court employed a variation of its familiar three-step process of (1) drawing a provisional equidistance line, (2) determining whether relevant circumstances call for adjustments to it, and (3) applying a proportionality test based on the lengths of the relevant coasts and the division of the relevant area. Starting in the first step, however, the Court faced the anomalous problem of calculating an equidistance line from Point A, which is far from shore and is itself not equidistant from each country, given the configuration of the coast. In creating the equidistance line, the Court therefore disregarded any points on Peru’s coast within an 80 M arc around point A, as illustrated in sketch-map number 3, reproduced on the next page.

At step two, the Court identified no relevant circumstances justifying an adjustment of the line, noting that the line “avoids any excessive amputations of either State’s maritime projections.” At step three, the Court noted that the existence of the first 80 M segment renders “difficult, if not impossible,” the usual mathematical calculation of proportionality between the lengths of the relevant coasts and the extent of the areas. Rather than a precise calculation, the Court therefore opted for a “broad assessment” that there was no significant disproportionality.

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The “equidistance” line adopted by the Court reaches a point (“Point B”) 200 M from Chile before it is 200 M from Peru, if the disregarded portion of Peru’s coastline is taken into account. Accordingly, the Court continued the boundary line along the 200 M limit from Chile’s baselines to its terminus at a point 200 M from both coasts (“Point C”). Peru’s exclusive economic zone and continental shelf accordingly include an area seaward of 200 M from Chile but within 200 M of Peru.

The Court left it to the parties to jointly determine the precise geographical coordinates of the boundary line established in the judgment.

Several judges in the majority relied on different reasoning to reach the same conclusions. Six judges dissented from the majority's key conclusions, especially with respect to whether a tacit agreement existed, whether it extended 200 M, and whether the nature of the tacitly agreed boundary was all-purpose. One judge also disagreed about the boundary's starting point.

Section IV – Implementation of the Tribunal's Decision

Both sides have accepted and implemented the ICJ's decision.

Before the ICJ issued its judgment, both countries had committed at high political levels to its implementation, although the Chilean side indicated that compliance would be a gradual process over time. Within a couple of weeks of the judgment, the countries' respective Foreign Ministers and Ministers of Defense met to initiate the process of implementation. The two sides subsequently collaborated and completed the technical work needed to identify contributing coastal basepoints and coordinates for the maritime boundary established by the ICJ.⁵

Several considerations are notable in regard to the mutual acceptance of this judgment. First, from the Chilean perspective, the maritime boundary had long followed the parallel out to at least 200 M, such that the judgment awarded approximately 50,000 square kilometers of ocean space to Peru that Chile previously had considered either its own or high seas. It is possible, however, that Chile recognized its arguments based on the 1952 and 1954 treaties

⁵ For an English translation of the report of this technical work, including the coordinates determined, see *International Maritime Boundaries*, Coalter G. Lathrop, ed., report 3-5 (2).

were not ironclad. (By comparison, Ecuador is also a party to the relevant 1950s treaties, but while this case was pending Peru and Ecuador concluded a separate maritime boundary agreement to formally establish their maritime boundary along the parallel of latitude.) Absent an agreement between the parties, it is highly unlikely a modern court or tribunal would delimit this boundary along the parallel, given the essentially arbitrary nature of using a parallel and the significant bend in the coastline.

At the same time, Peru's arguments did not prevail, either, such that neither side was able to claim total victory. In particular, the Court found compelling evidence of a tacitly agreed boundary along the parallel to 80 M. While the 80 M figure has been criticized as having little basis in the evidence (including in the dissenting opinions), it has the practical effect of preserving for Chile its ability to continue fishing in the waters closest to shore, which reportedly host Chile's most valuable fisheries at issue.

The Court also sided with Chile regarding the coastal starting point for the maritime boundary. In doing so, however, it noted the end point of the land boundary may not be at that same location, formally avoiding a decision on a matter not before the Court. While legally possible in the view of the Court, if the maritime and land boundaries are not coterminous certain practical complications could arise, since one state's territorial sea would extend along the other state's shorefront. Such issues might not prove significant as a practical matter over the short distance at issue here, but their political significance could be a different question. Indeed, while the countries have accepted the Court's judgment on the location of the maritime boundary, tensions have flared somewhat over the terrestrial border dispute regarding the small triangle of land between Boundary Marker No. 1 and the sea, with each side looking in part to the ICJ's maritime judgment for support of its position on the location of the land border. It is

presumably because of this ongoing terrestrial dispute that national legislation to implement the new maritime boundary coordinates appears to have stalled and that the two countries have not yet submitted their final maritime boundary coordinates to the UN, as they previously expressed an intention of doing jointly. Even if certain formal steps remain outstanding, however, in practice it appears that the two sides are fully honoring the ICJ's judgment and consider the maritime boundary dispute behind them.

Section V – Conclusions

This case represents a successful example of boundary dispute settlement through adjudication, which one Peruvian newspaper labeled the “epilogue of 135 years of conflict.” The following factors are among those that seem to have contributed to this favorable result and may be relevant to successful maritime boundary adjudication more generally:

- **A legal framework for peaceful dispute settlement** accepted by both parties—in this case, the dispute settlement provisions in the Pact of Bogota, which have general applicability far broader than the particular question of maritime boundaries.
- **Exclusion of the terrestrial sovereignty dispute** from the scope of the adjudication, both by the parties and by the Court itself.
- On both sides, a **high-level political commitment** to compliance, publicly made both in advance of and following the decision, and direct high-level political engagement between the countries about the issue both before and after issuance of the decision.

- **Adequate legal and technical expertise** on both sides—not only to argue the case in a manner consistent with national objectives and reasonably anticipated outcomes, but also to implement the Court’s decision (e.g., the capacity to conduct the coastal surveys necessary to identify relevant basepoints and calculate coordinates of the line established by the ICJ).
- **Improving general relations otherwise** between the countries (political cooperation, increasing economic interconnectedness, etc.), creating a mutual desire to put the maritime boundary issue behind them.
- **An accepted context of international legal rules** regarding the merits of the dispute, which was important in several respects, including:
 - Neither side contested the customary and conventional international law governing the main dispute or the Court’s jurisdiction over it. On the contrary, both sides—including Peru, which is not a party to the 1982 United Nations Convention for the Law of the Sea (UNCLOS)—relied on these rules to make arguments that, for the most part, were not unreasonable under the circumstances. (Indeed, the development of today’s international law of the sea owes itself in part to the claims of these parties since 1947, such that this case affirms both sides’ maritime rights and jurisdiction to an extent that would have been internationally unthinkable when they first sought to increase the offshore area under their control.)
 - The Court was able to rely, at least ostensibly, on precedents for its determinations, even where such determinations are novel in some respects (e.g., the *Nicaragua v. Honduras* “compelling” standard for evidence of a tacit agreement of a boundary, and the

familiar 3-step method for delimitation that it adapted to the circumstances of this case, even if questions could be raised about the particular manner in which these standards were adapted and applied).

- The proceedings may have provided legally relevant benefits for the world at large, not just the two parties, such as through Peru's clarification during the hearings that its expansive maritime claims are intended to be consistent with the Law of the Sea Convention.
- Under that accepted international framework, **the lack of an ironclad legal case on either side** (here, the lack of a clear written agreement on a boundary, combined with longstanding practice that deviated from an equidistance approach), such that each side might reasonably have expected not to win everything it claimed.
- Perhaps the **lack of adequate evidence?** While from a legal perspective the lack of a particularly strong evidentiary basis for some of the Court's findings (e.g., the 80 M extent, or the all-purpose nature of the boundary throughout its entire extent) may seem like a flaw, these evidentiary gaps arguably may have given the Court more flexibility to choose an innovative result that would be politically acceptable to both sides, excusing certain slipperiness or innovation in the application of existing doctrines without necessarily creating an adverse precedent for other situations. Similarly, the tacit nature of the agreement at issue and the fact that the parties did not address certain arguments themselves may have provided the court with greater flexibility to decide the case with a view toward reaching an equitable result.
- A judgment that:

- splits the difference in a way that **preserves each side's most important interests** (e.g., each party's position on the land boundary, Chile's near-shore fishing, and Peru's claims south of the parallel and beyond 200 M),
- **while avoiding unnecessary technical complexities** that could have resulted (e.g., by favoring a single all-purpose boundary and thereby avoiding any "gray areas" where, for example, one country's exclusive economic zone overlaps with the other's continental shelf).
- Relatedly, **acceptance by domestic stakeholders** (and the appropriate management of those expectations by political leaders and others), based on their anticipation of any political, social, and economic impact of the decision.



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