The International Court of Justice and the Peru-Chile Maritime Case

https://www.e-ir.info/2014/04/21/the-international-court-of-justice-and-the-peru-chile-maritime-case/

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On 27 January 2014, the International Court of Justice (ICJ) rendered its decision concerning the maritime dispute between two South American countries (*Peru v. Chile*).[1] The central questions before the Court were whether a maritime boundary exists between Peru and Chile, and if so, what is the nature and extent of such a boundary. In order to decide the dispute, the Court took into consideration relevant state practices and looked to a series of agreements between the two parties, including the 1947 Proclamations, the 1952 Santiago Declaration, and related agreements concluded between 1952 and 1954, including the 1954 Agreement.

The judgment – which is final and without possibility of appeal – represents another important stone in the mosaic of what is usually referred to as the 'Law of Maritime Delimitations.' The case is interesting from different perspectives and has its origin in the late 1940s and 1950s when some Latin American states, including Peru and Chile, first put forward claims to maritime zones (including superjacent waters) extending 200 nautical miles from their coasts.[2] The judgment casts some additional light on the legal value of those early unilateral proclamations which paved the way for a new principle of the Exclusive Economic Zone (EEZ) in international law.[3] The aim of this article is to provide a brief summary of the judgment of the Court.

Claims by the Parties

As usual, the parties adopted different positions. In its application dated 16 January 2008 the Republic of Peru asked the Court to 'determine the course of the boundary between the maritime zones of the two States in accordance with international law… and to adjudge and declare that Peru possesses exclusive sovereign rights in the maritime area situated within the limits of 200 nautical miles from its coast but outside Chile's exclusive economic zone or continental shelf.'[4] According to Peru, no maritime boundary exists between the two states. Peru successfully based the jurisdiction of the Court on Article XXXI of the American Treaty of Pacific Settlement, signed on 30 April 1948 and referred to as the 'Pact of Bogota.'[5] On the other hand, Chile had been persistent throughout the proceedings in defending the position that a (full) maritime boundary already exists. It based its assertion on the 1952 Santiago Declaration[6] which 'established an international maritime boundary along the parallel of latitude passing through the starting point of the Peru-Chile land boundary and extending to a minimum of 200 nautical miles.'[7] Chile makes reference to a number of subsequent agreements, some of them allegedly upgrading and clarifying the Santiago Declaration, and furthermore to subsequent practices of the two states, as evidence of the existence of such boundary.[8] The position of Chile was, therefore, that the Court should just confirm the existing maritime boundary and that 'the principle of *pacta sunt servanda* and the principle of stability of boundaries prevents any attempt to invite the Court to redraw a boundary which has already been agreed.'[9] Peru, on the other hand, argued that the delimitation line advocated by Chile passing through the parallel of latitude along the starting point of the land boundary is 'totally inequitable' as it results in a severe cut-off effect on the detriment of Peru.[10]

The first question for the Court was whether there is an existing maritime boundary between the two states, and its eventual extent and/or legal nature.

Has the 1952 Santiago Declaration Established a Maritime Boundary?

First of all, the Court had to assess the legal value of the 1947 Declarations of Peru and Chile with which the two States unilaterally proclaimed certain maritime rights, including those pertaining to superjacent waters. Those rights extended 200 nautical miles from their coasts. The Court noted that the 'two states are in agreement that the 1947 Proclamations do not in themselves establish an international maritime boundary.'[11] In order to provide a definite answer in this regard, the Court had to evaluate some subsequent agreements between the States. The crucial document was the 1952 Santiago Declaration.

According to the 1952 Declaration, 'the Governments of Chile, Ecuador and Peru proclaim as a norm of their international maritime policy that they each possess exclusive sovereignty and jurisdiction over the sea along the coasts of their respective countries up to a minimum distance of 200 nautical miles from these coasts.'[12] The Declaration makes it clear that the exclusive jurisdiction over this zone includes both superjacent waters, and the seabed and subsoil.[13] The Court, however, notes that the 1952 Santiago Declaration does not refer to the delimitation of maritime boundaries and that it lacks information which may be expected in a delimitation agreement, for example specific coordinates and/or cartographic material.[14] The Court accordingly concludes that the Santiago Declaration in Paragraphs II and III does not relate explicitly to the delimitation of lateral boundaries of the proclaimed 200-nautical-mile maritime zones, nor that there can be a need for such boundaries implied from reference to sovereignty and jurisdiction.[15] Nonetheless, the Court notes that the Santiago Declaration in Article 4 contain some elements which are important for maritime delimitations, notably with regard to islands.[16] The Court, however, makes the point that the article in question does not regulate lateral boundaries apart from islands.

The 1954 Frontier Zone Agreement: Evidence of an Existing Maritime Boundary

The Court then turned to the analysis of the various agreements which followed the 1952 Santiago Declaration.[17] A special reference is made in this regard to the 1954 Special Maritime Frontier Zone Agreement, which has its origin in the proposals by Peru and Ecuador to establish a 'neutral zone... on either side of the parallel which passes through the point of the coast that signals the *boundary* between the two countries.'[18] The text was made even clearer later on during the negotiations, when the term 'neutral zone' was replaced with 'maritime frontier zone.' Noteworthy is the fact that the 1954 Agreement established a 'zone of tolerance' for fishing vessels 'of 10-nautical miles on either side of the parallel which constitutes the maritime boundary.'[19] Two major conclusions were made by the Court regarding the 1954 Frontier Zone Agreement. Firstly, the agreement is the proof of an existing maritime boundary at that time; and secondly, the agreement does not indicate the nature of the maritime boundary, nor its extent, apart from the fact that it exceeds 12-nautical-miles.[20]

The Nature and Extent of the Existing Maritime Boundary

When it comes to the nature of the agreed maritime boundary, the Court recalled the 1947 Proclamations and the 1952 Santiago Declaration. As both documents made reference to the rights over the seabed and subsoil, as well as to waters above the sea-bed and its resources, the Court concluded that a boundary is an all-purpose one.[21]

With regard to the extent of the maritime boundary, the Court resorted to evidence of the activities of the parties (*effectivities*) in the early and mid-1950s, as well as to developments in the field of law of the sea. Regarding fisheries, the Court reached a conclusion based on submitted documents and statistics that fisheries activities in that period were unlikely to occur beyond 60 nautical miles from the coast.[22] The Court reinforces its assertion by making reference to the fact that the main reason for the proclamation of the 200-nautical-miles zone by Peru and Chile in the late 1940s and early 1950s was the need to protect the 'Humboldt Current Large Maritime Ecosystem' located at approximately 200 nautical miles from the coast and threatened by long distance fleets, and not by the capacity of the coastal states to fish up to that point. Although the fisheries activities alone cannot be determinative of a single maritime-boundary, according to the Court they provide 'support for the view that the Parties, at the time when they acknowledged the existence of an agreed maritime boundary between them, were unlikely to have considered that it extended all the way to the 200-nautical-mile limit.'[23] Focusing on the fishing activities of the parties conducted up to 60 nautical miles from the coast (and, inter alia, enforcement activities), the relevant practice of other states, and the work of the International Law Commission on the Law of the Sea, the Court is of opinion that the evidence at its disposal does not allow it to conclude that the agreed maritime boundary along the parallel extended beyond 80 nautical miles from its starting point.[24] Furthermore, the recognition by the 1954 Maritime Frontier Zone Agreement of the maritime boundary is not sufficient to reach a conclusion that the maritime boundary ‘extended far beyond the parties extractive and enforcement capacity at that time.’[25]

Delimitation Beyond the Existing Maritime Boundary

After reaching the conclusion that there is already in place an existing maritime boundary (and the definition of its breadth), the Court had to address the issue of the starting point of the boundary and, furthermore, to define the boundary beyond point A (80 nautical miles). The Court relied in this regard on the record of discussions leading to the 1968 and 1969 lighthouse arrangements, with which the parties decided to build lighthouses ‘to materialize the parallel of the maritime frontier originating’ at the first marker of the land boundary.’ The Court had no doubt that the ‘1968-1969 lighthouse arrangements therefore serves as compelling evidence that the agreed maritime boundary follows the parallel that passes through ‘Boundary Marker No. 1.’[26]

Having concluded that an agreed single maritime boundary exists, and that the boundary starts at the intersection of the parallel of latitude passing through Boundary Marker No. 1 with the low-water line, and continues for 80 nautical miles along that parallel, the Court had to draw the maritime boundary from that point on.[27] The Court used in this regard the standard ‘three-stage’ procedure which has become an essential part of the contemporary law of maritime delimitations. In the first phase, the court drew a provisional equidistance line from the end of the ‘existing maritime boundary’ until it reached the 200-nautical-mile-limit measured from the Chilean baseline (Point B). The Court nonetheless noted the particularity of this case, whereas the starting point of the maritime boundary is located 80 nautical miles from the closest point on the Chilean coast and about 45 nautical miles from the closest point on the Peruvian coast.[28] The Court then observed that from Point B, the 200-nautical-mile limit of Chile’s maritime entitlement runs in a generally southward direction. The final segment of the maritime boundary therefore proceeds from Point B to Point C, where the 200-nautical-mile limits of the Parties’ maritime entitlements intersect.[29]

In light of the above, the Court reached the conclusion in the second step that there are no relevant circumstances which would call into question the relevant equitable nature of the provisional equidistance line. The Court noted that the equidistance line avoids any excessive amputation of either State’s maritime projections.

Finally, the Court had to determine whether the provisional delimitation line produces a result which ‘is significantly disproportionate in terms of the lengths of the relevant coast and the division of the relevant area.’ Despite the fact that the Court could not, due to the distant starting point of the maritime boundary, undertake a precise calculation of the length of the relevant areas and relevant coastlines, it nonetheless engaged in a broad assessment of proportionality and it reached a conclusion that ‘no significant disproportion is evident, such as would call into question the equitable nature of the provisional equidistance line.’[30]

The Court concluded

that the maritime boundary between the Parties starts at the intersection of the parallel of latitude passing through Boundary Marker No. 1 with the low-water line, and extends for 80 nautical miles along that parallel of latitude to Point A. From this point, the maritime boundary runs along the equidistance line to point B, and then along the 200-nautical-mile limit measured from the Chilean baselines to Point C.[31]

Conclusion

The judgment in question offers at least two conclusions, one legal and another of a political nature. Firstly, it confirms the Court’s traditional and conservative ‘equidistance rule orientation,’ which the ICJ is prepared to modify only in very special circumstances. Secondly, despite the fact that in the weeks leading up to the Court’s decision, both parties publicly stated that they would comply with the Court’s judgment, it is not difficult to agree with Uzma S. Burney that ‘it remains to be seen whether this will be the case,’ because the political and legal consequences of this decision ‘are not difficult to foresee.’[32] She thinks that even ‘before the Court issued its judgment, Bolivia had filed an application with the Court asking that Chile be required to grant it a corridor to access the sea,’ so given the political fallout from the decision in *Nicaragua v. Colombia*, where Colombia withdrew from the Pact of Bogota that gives the Court compulsory jurisdiction over disputes among its signatories, it will be interesting to see whether this subsequent decision will have a similar impact on the membership of the Pact, or if there will be similar delays in the implementation of the Court's decision.

Bibliography

[1] The Judgement is available on the ICJ website at http://www.icj-cij.org/docket/index.php?p1=3&p2=2&case=137&code=pch&p3=4.

[2] Paragraph 19 of the ICJ Judgment.

[3] For a detailed analysis of the development of a concept of the EEZ in international law see ATTARD, D. (1987). *Exclusive Economic Zone in International Law*. Oxford: Clarendon Press.

[4] Application by Peru available at http://www.icj-cij.org/docket/files/137/14385.pdf. See also paragraph 19 of the ICJ Judgment.

[5] Ibid.

[6] The 1952 Santiago Declaration on the Maritime Zone was signed by Chile, Peru, and Ecuador, and later joined by Costa Rica in 1955.

[7] Paragraph 22 of the ICJ Judgment.

[8] Paragraph 23 of the ICJ Judgment.

[9] Ibid.

[10] See Sketch-map No. 2: The maritime boundary lines claimed by Peru and Chile respectively on page 16 of the ICJ Judgment.

[11] See Paragraph 39 of the ICJ Judgment.

[12] Paragraph II. of the 1952 Santiago Declaration. Quoted on page 24 of the ICJ Judgment.

[13] Ibid. Paragraph III.

[14] Paragraph 58 of the ICJ Judgment.

[15] Paragraph 59 of the ICJ Judgment.

[16] Paragraph 58 of the ICJ Judgment. Article 4 of the 1952 Santiago Declaration provides as follows: 'If an island or a group of islands… is situated less that 200 nautical miles from the general maritime zone belonging to another of those countries, the maritime zone of the island or group of islands shall be limited by the parallel at the point at which the land frontier of the States concerned reaches the sea.'

[17] Paragraph 71 of the ICJ Judgment.

[18] Paragraph 73 of the ICJ Judgment.

[19] ICJ Unofficial Press Release No. 2014/2, 27 January 2014, p. 2. Available from: http://www.icj-cij.org/docket/files/137/17928.pdf.

[20] Ibid.

[21] Paragraph 102 of the ICJ Judgment.

[22] Paragraph 108 of the ICJ Judgment.

[23] Paragraph 111 of the ICJ Judgment.

[24] Paragraph 108 of the ICJ Judgment.

[25] Paragraph 149 of the ICJ Judgment.

[26] Paragraph 174 of the ICJ Judgment.

[27] Paragraph 177 of the ICJ Judgment.

[28] Paragraph 183 of the ICJ Judgment.

[29] Paragraph 190 of the ICJ Judgment.

[30] Paragraph 194 of the ICJ Judgment.

[31] Paragraph 196 of the ICJ Judgment.

[32] BURNEY, U. S. (2014) International Court of Justice Defines Maritime Boundary Between Peru and Chile. *American Society of International Law*. Volume 18, Issue 3 (February 10, 2014). Available from: http://www.asil.org/insights/volume/18/issue/3/international-court-justice-defines-maritime-boundary-between-peru-and-chile.

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