

# Peru and Chile's Ocean View Resolved Dispute

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### **Peru and Chile's Ocean View Resolved Dispute: One-Year Anniversary of the International Court of Justice's Ruling**

January 2015 marks the one-year anniversary of the International Court of Justice's ruling in the case of *Peru v. Chile* maritime border dispute. The legal process, which lasted over six years, culminated in an impartial judgment and victory for both sides. The resolved dispute between Peru and Chile proves that legalistic intervention is a peaceful and adequate method for defining borders in modern times. Using *Peru v. Chile* as a case study, this essay explores the delineation of maritime boundaries.

#### **Maritime Boundary Delineation**

Defining maritime boundaries is a complex task and the source of much controversy. Hence, it is not surprising that numerous nations around the world are involved in maritime disputes. In 2010, for instance, Latin America had eight active and approximately 14 inactive marine boundary disputes.[1] As part of this framework, it is relevant to discuss how maritime borders are defined in the modern world.

International institutions often serve as facilitators of peace and order, and for the purpose of maritime regulation, the United Nations (UN) has become the leading authority.[2] In 1958, the UN conducted the first of three conventions on maritime law and set the tone for international regulation. The UN conducted two subsequent conventions in 1960 and 1982, resulting in the United Nations Convention of the Law of the Sea (UNCLOS), a comprehensive document defining the legal use and demarcation of national and international waters.[3] The UNCLOS includes Article 15:

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. The above provision does not apply, however, where it is necessary by reason of historic title, or other special circumstances, to delimit the territorial seas of the two States in a way which is at variance therewith.[4]

Article 15 provides guidance on how to delineate boundaries between nations whose baselines are adjacent to one another, which is precisely the case of Peru and Chile's coastal areas.

The definitions of territorial sea limits were of particular interest during the *Peru v. Chile* court hearing. According to UNCLOS, territorial waters are defined as the area starting from the baseline out to 12 nautical miles into the sea where countries have full control and sovereignty. The baseline is the "low-water line along the coast," or simply the shore.[5] The continuous zone is the sea area beyond the territorial waters that extend an additional 12 nautical miles where countries chose whether to control regulatory items such as customs and immigration. Finally, the exclusive economic zone (EEZ) is the area extending 200 nautical miles from the baseline towards the sea, where the coastal nation has exclusive rights to the available natural resources.[6]

#### **Peru and Chile Maritime Boundary Historical Background**

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Peru and Chile have a longstanding history of territorial disputes and agreements that directly influenced their most recent maritime disagreements. Dating back to the 19th century, the War of the Pacific was fought among Chile, Bolivia, and Peru. The war started in 1879 with the alliance of Peru and Bolivia against Chile over the mining industry along shared territory, and ended in 1883 with the Treaty of Ancon defining national land borders and benefiting Chile with territorial gain.[7] An effort to resolve subsequent disagreements between the new nations resulted in the 1929 Lima Treaty, which defined their borders. Peru and Chile agreed that *El Punto de la Concordia* was the last boundary point between the two nations before reaching coastal waters; the treaty did not refer to maritime boundaries. Consequently, in 1947, Chile and Peru “unilaterally proclaimed maritime rights extending 200 nautical miles” from the baseline but did not delineate the configurations of their respective maritime borders.[8]

In 1952, Chile, Ecuador, and Peru signed the Santiago Declaration, reserving the right for maritime sovereignty across an area extending 200 nautical miles; but once again, these nations did not define their maritime borders.[9] In 1954, Chile and Peru participated in the Special Maritime Zone Agreement in which the main goal was to avoid sanctions for small fishing boats crossing maritime boundaries unaware of their position in the ocean; therefore, it created a buffer zone along the maritime boundary which at the time Peru and Chile referred to as the parallel extending 12 miles beyond the coastal line.[10]

Between 1968 and 1969, Peru and Chile made official arrangements to build lighthouses “at the point at which the common border reaches the sea, near boundary marker number one.”[11] For practical purposes, both countries used this parallel as the demarcation of fishing waters. In 1986, Peru invited Chile to officially delineate the maritime boundary between the two nations. In turn, Chile declined to negotiate, claiming the maritime border had already been stipulated in previous treaties. Unsatisfied with Chile’s reluctance to negotiate, Peru decided to appeal to the international justice system.[12]

## Peru v. Chile

On January 16, 2008, Peru brought Chile to the principal judicial body of the UN, the International Court of Justice (ICJ) to resolve the dispute. Peru filed a petition against Chile requesting the official delimitation of the maritime border between both nations starting at Concordia and the recognition of its EEZ, whom Chile did not acknowledge.

Peru argued that its maritime boundary had not been officially established in any of the previous international instruments used between the two nations. It claimed that the Declaration of 1952 and the Proclamation of 1954 only applied to artesian fishing practices, and did not prove that both countries had agreed on a maritime border. Since there was no formal agreement between the countries, Peru argued that the method of finding a median line applied to its case as stipulated in Article 15 of the UNCLOS. Additionally, Peru asked that the maritime border start from *El Punto de la Concordia* as the baseline, rather than at Marker No. 1, which is a point farther inland.[13]

Chile argued that the events of 1952 and 1954 were official treaties and, according to the Law of the Sea, the median line would not apply since official agreements were established. Chile noted that “the principle of stability of boundaries prevent[ed] any attempt to invite the Court to redraw a boundary that ha[d] already been agreed.”[14] Furthermore, Chile maintained that Marker No. 1 was the first point from which the maritime border was drawn and should remain that way.[15]

## Geopolitical Representation

After 1986, the maritime border dispute between Peru and Chile gained popular momentum and both countries started to print maps with their respective claimed maritime boundaries. The geopolitical representation of each country exemplified the concept of picking and choosing. Noel Parker and Rebecca Adler-Nissen explains, “States do not choose whether to have a border or not. Yet they have a range of possibilities when it comes to how they inscribe their borders.”[16] To legitimize their maritime boundaries, Peru and Chile produced and distributed maps depicting maritime borders according to their interpretation—either perpendicular to the shore or matching the parallel of latitude line respectively.[17]

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## Peru and Chile Fisheries

A critical point of contention between Peru and Chile was the distribution of natural resources in the coastal area of both countries. According to the UN, Chile and Peru rank among the top ten fishery producers in the world.[18] The UN's Food and Agriculture Organization (FAO) provides statistics for the distribution of highly migratory species, indicating that the deep waters of Peru and Chile are abundant in tuna. Additionally, sardines and anchovies are at the core of their fishing industries. Anchovies reproduce year-round and are predominantly found between 20–50 nautical miles offshore, while sardines are found between 20–80 nautical miles.[19] The maritime dispute threatened Chile's fishing industry, particularly artesian practices, and offered potential gains to Peru.

## ICJ Proceedings and Ruling

On January 27, 2014, the ICJ came to its judgment. To determine a maritime border between Peru and Chile, the ICJ had to decide first on the location of the boundary's starting point. Peru claimed that El Punto De La Concordia, defined in 1929, should be the starting point for the maritime boundary. Nevertheless, the ICJ decided that the lighthouse arrangements of 1968–1969 provided enough evidence that the initial point was the "intersection of the parallel of latitude passing through Boundary Marker No. 1 with the low-water line." [20]

As part of the ruling strategy, the ICJ took into consideration the agreement of 1954, validating that the treaty recognized a practical maritime border between the two nations, but that such treaty did not stipulate the border run 200 nautical miles into the ocean. The ICJ also accepted Chile's claims that the lighthouse provided evidence that Peru agreed with the border running along the parallel. Additionally, the ICJ evaluated the economic and environmental implications of the claim, and decided that in the context of the 1954 treaty, the border pertained to small-scale fishing predominantly from the shoreline out to 60 nautical miles. Finally, it concluded that the border starts at Marker No. 1 and extends 80 nautical miles from the marker into the ocean along the parallel of latitude until it reaches Point A.[21] From this point, the boundary is the medium line between two selected coastal points (one on the Peruvian coast, another on the Chilean coast) until this line intersects Chile's EEZ (Point B).[22] Additionally, the ICJ recognized the 200 nautical miles EEZ for Peru, which Chile considered high seas (Point C).[23]

## Conclusion

Professor Rodrigo Nieto-Gomez, an associate professor of Geopolitics at the Naval Postgraduate School, offers a valuable perspective in creating and defining borders: "borders are often conflicts frozen in time; they are geopolitical constructs that materialize in territories of linear configuration . . . with management, legal, and membership implications." [24] *Peru v. Chile* is a significant example of how borders represent snapshots of conflict engineered with artificial lines. It also demonstrates that in modern times, nations do not have to resort to armed conflict to resolve territorial disputes.

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