## SEPARATE OPINION OF JUDGE OWADA

1. The Judgment, in its operative part *(dispositif)* states the decision of the Court, *inter alia*, as follows:

> "The Court,
>
> (1) . . .
>
> *Decides* that the starting-point of the single maritime boundary delimiting the respective maritime areas between the Republic of Peru and the Republic of Chile is the intersection of the parallel of latitude passing through Boundary Marker No. 1 with the low-water line; . . .
>
> (2) . . .
>
> *Decides* that the initial segment of the single maritime boundary follows the parallel of latitude passing through Boundary Marker No. 1 westward; . . .
>
> (3) . . .
>
> *Decides* that this initial segment runs up to a point (Point A) situated at a distance of 80 nautical miles from the starting-point of the single maritime boundary; . . .
>
> (4) . . .
>
> *Decides* that from Point A, the single maritime boundary shall continue south-westward along the line equidistant from the coasts of the Republic of Peru and the Republic of Chile, as measured from that point, until its intersection (at Point B) with the 200-nautical-mile limit measured from the baselines from which the territorial sea of the Republic of Chile is measured; . . ." (Judgment, paragraph 198).

2. Although I have accepted the conclusions contained in these operative paragraphs, I have not been able to associate myself fully with the reasoning which has led the Court to this conclusion relating to the concrete delimitation of the single maritime boundary between Peru and Chile. I wish to explain in some detail my reasons why I have to maintain my reservations with regard to some aspects of the Judgment, in spite of my vote in favour of the final conclusions that the Judgment has reached.

3. The Judgment comes to the above conclusions on the basis of a number of findings it made as explained in its reasoning part. They can be summarized as follows:

(1) The Judgment rejects the position of the Respondent, developed in its contention that "the respective maritime zone entitlements of Chile and Peru have been fully delimited by agreement" (Judgment, paragraph 14; Final Submissions of Chile *(b)* (i)), more specifically, by the 1952 Santiago Declaration. I fully endorse this position of the Judgment.

(2) The Judgment does not accept the position of the Applicant either, as based on its contention that "[t]he maritime zones between Chile and Peru have never been delimited by agreement or otherwise" (Application, para. 2), and that therefore

> "[t]he delimitation between the respective maritime zones between [Peru] and [Chile], is a line starting at 'Point Concordia' . . . and equidistant from the baselines of both Parties, up to a point situated at a distance of 200 nautical miles from those baselines" (Judgment, paragraph 14; Final Submissions of Peru (1)).

I equally support this position of the Judgment.

(3) In their stead, the Judgment finds in the contexts of the 1954 Agreement on the establishment of the "Special Maritime Frontier Zone" (hereinafter "1954 Agreement"), as well as the 1968-1969 arrangements for the construction of lighthouses, that the Parties acknowledge, in spite of, and separately from, the finding outlined in (1) above, the existence of an agreement between the Parties on a maritime (zone) boundary along the parallel of latitude up to 80 nautical miles from the starting-point. On this finding of the Court, however, I have to express my serious reservation.

4. On the basis of these findings, which form the legal premise from which the *dispositif* of the Judgment is derived, the Judgment comes to the conclusion that

> "the initial segment of the single maritime boundary follows the parallel of latitude passing through Boundary Marker No. 1 westward;
>
> . . . . . .
>
> that this initial segment runs up to a point (Point A) situated at a distance of 80 nautical miles from the starting-point of the single maritime boundary;
>
> . . . . . .
>
> [and] that from Point A, the single maritime boundary shall continue south-westward along the line equidistant from the coasts of [Peru] and [Chile], as measured from that point, until its intersection (at Point B) with the 200-nautical-mile limit measured from the baselines from which the territorial sea of [Chile] is measured." (Judgment, paragraph 198.)

5. Inasmuch as the Judgment takes the view that the 1952 Santiago Declaration did not contain an agreement on the delimitation of the zones of the respective maritime entitlements of the Parties to the Declaration, and that the 1954 Agreement acknowledges the existence of an agreement delimiting the zones of the respective maritime entitlements of the Parties to the present dispute, the Judgment has to establish:

*(a)* that there has been some new legal fact (acts/omissions) on the part of the Parties to the present dispute that legally created an agreement setting forth a single maritime boundary between the Parties along the parallel of latitude passing through Boundary Marker No. 1; and

*(b)* that this single maritime boundary, which follows the parallel of latitude, extends only to a distance of 80 nautical miles, beyond which there does not exist any delimited maritime boundary accepted by the Parties (by agreement or otherwise).

6. The present Judgment, however, does not seem to have substantiated these points with sufficiently convincing supporting evidence. Especially problematical to my mind are the following two points:

*(a)* the Judgment states quite categorically that the Parties acknowledge in the 1954 Agreement the existence of a maritime boundary for all purposes between them, without showing how and when such agreement came about and what concretely this agreement consists in;

*(b)* the Judgment observes in this connection that this maritime boundary acknowledged by the Parties as a line of parallel of latitude passing through Boundary Marker No. 1, should be regarded as extending up to a distance of 80 nautical miles but no further.

I shall try to focus my examination especially on these two issues.

**(a)** ***On what legal basis does the Judgment declare that the Parties acknowledge the existence of the maritime boundary along a parallel of latitude?***

7. Throughout the pleadings, Chile has consistently maintained its position that the 1952 Santiago Declaration was the legal basis, i.e., *fons et origo* of the maritime boundary between Chile and Peru, 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" (Judgment, paragraph 22). The Judgment, quite correctly in my view, has rejected this position, both as a matter of interpretation of the provisions of the Declaration and on the basis of its legislative history as revealed in the *travaux préparatoires* of the Santiago Conference.

8. Proceeding to the 1954 Agreement Relating to a Special Maritime Frontier Zone, however, the Judgment, in an almost Delphic manner, declares as follows:

> "In the view of the Court, the operative terms and purpose of the 1954 Special Maritime Frontier Zone Agreement are . . . narrow and specific [but] [t]hat is not however the matter under consideration by the Court at this stage. Rather, its focus is on one central issue, namely, the existence of a maritime boundary. On that issue *the terms of the 1954 Special Maritime Frontier Zone Agreement, especially Article 1 read with the preambular paragraphs, are clear*. They acknowledge in a binding international agreement that a maritime boundary already exists." (Judgment, paragraph 90; emphasis added.)

The Judgment concludes that "[t]he Parties' express acknowledgment of [the maritime boundary's] existence can only reflect a tacit agreement which they had reached earlier" (Judgment, paragraph 91).

9. After close scrutiny of "the terms of the 1954 Special Maritime Frontier Zone Agreement, especially Article 1 read with the preambular paragraphs" (Judgment, paragraph 90), I fail to see how these provisions can be said to be so "clear" as to justify this conclusion.

10. The Preamble and Article 1 of the 1954 Agreement provide as follows:

> "Considering that:
>
> Experience has shown that innocent and inadvertent violations of the maritime frontier between adjacent States occur frequently because small vessels manned by crews with insufficient knowledge of navigation or not equipped with the necessary instruments have difficulty in determining accurately their position on the high seas;

> The application of penalties in such cases always produces ill-feeling in the fishermen and friction between the countries concerned, which may affect adversely the spirit of co-operation and unity which should at all times prevail among the countries signatories to the instruments signed at Santiago; and
>
> It is desirable to avoid the occurrence of such unintentional infringements, the consequences of which affect principally the fishermen;
>
> Have agreed as follows:
>
> 1. A special zone is hereby established, at a distance of 12 nautical miles from the coast, extending to a breadth of 10 nautical miles on either side of the parallel which constitutes the maritime boundary between the two countries."

11. It should be clear from those passages quoted above, that the plain and ordinary meaning of the language used is anything but "clear". The crucial words in Article 1 state that "[a] special zone is hereby established . . . extending to a breadth of 10 nautical miles on either side of *the parallel which constitutes the maritime boundary between the two countries*" (1954 Agreement; emphasis added). This wording, however, can be read either as declaratory of the legal situation that already exists, as the Judgment claims, or as constitutive of a line which the Parties created for the implementation of the purposes of this functional agreement. There is no clue to clarify this point in the Preamble, which contains no language whatsoever that refers to this point.

12. In my view, this language, in its plain meaning, does not, as such and without additional evidence, warrant the existence of a tacit agreement establishing such a boundary for all purposes between the Parties. Tacit agreements establishing any type of international boundary, either land or maritime, are exceptional for the simple reason that when it comes to the question of territorial sovereignty, States almost always are extremely jealous of safeguarding their sovereignty, and, in a situation involving the issue of transfer of territorial sovereignty, normally act with particular care and caution. It is for this reason that the Court has always adopted a sceptical view towards the claim by a State that a tacit agreement exists establishing a maritime boundary in its favour. Thus the Court, in the recent cases involving territorial and maritime disputes, rejected the claim of one of the parties that a tacit agreement existed, stating that:

> "[e]vidence of a tacit legal agreement must be *compelling*. The establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed." (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II),* p. 705, para. 219, quoting *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; emphasis added.)

It is my view that this stringent standard is not met in the present case.

13. In the context of the present situation, where a provision of a treaty remains ambiguous or obscure after an effort to interpret it "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose" (Vienna Convention on the Law of Treaties, Art. 31, para. 1) has not led to a satisfactory resolution, the natural course to follow is to have recourse to "supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion" (*ibid.*, Art. 32).

14. The *travaux préparatoires* of the 1954 Agreement reveal that the final version of the relevant language in Article 1 of the 1954 Agreement, relied upon by the Judgment to establish the existence of a tacit agreement on a maritime boundary, emerged in a murky situation which leads me to the conclusion that the Judgment rests on a factually quite dubious ground.

15. The 1954 Agreement establishing the "Zone of Tolerance" has its origin in a paper jointly submitted by the delegates of Ecuador and Peru at the Permanent Commission of the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific (hereinafter "CPPS") on 8 October 1954. It is entitled the "Recommendation for the Establishment of a Neutral Zone for Fishing in the Maritime Frontier of the Neighbouring States" of the Santiago Conference. As originally proposed, the aim of this paper was stated as "[t]he creation of a neutral zone at a distance of 12 nautical miles from the coast, extending to a breadth of ten nautical miles on either side of the parallel which passes through *the point of the coast that signals the boundary between the two countries*" (emphasis added). This recommendation was adopted by the CPPS and later became the 1954 Agreement. This initial language explaining the goal of the 1954 Agreement gives no indication whatsoever for the existence of a tacit agreement establishing a maritime boundary. Rather, it refers to "the parallel which passes through the point of the *coast* that signals the boundary between the two countries" (Judgment, paragraph 73; emphasis added), suggesting that what the drafters were indicating was the *land* boundary between the countries concerned.

16. The case file before the Court submitted by the Parties does not contain any other document indicating that any changes had been made to this language subsequently, until two months later when this resolution adopted by the CPPS was presented as a draft for agreement to the 1954 Conference on 3 December 1954. At this Conference, the Ecuadorian delegate proposed that "the concept already declared in Santiago that the parallel starting at the boundary point on the coast constitutes the maritime boundary between the neighbouring signatory countries, [be] incorporated into this article", together with the change of the title of the agreement from "Establishment of a Neutral Fishing and Hunting Zone" to "Special Maritime Frontier Zone". Article I was thus "amended", apparently without any discussion, to its present wording, incorporating the phrase "the parallel which constitutes the maritime boundary between the two countries" (Judgment, paragraph 73). Thus, the *travaux* of the Conference would seem to indicate that the language of Article 1 of the 1954 Agreement, relied upon by the Judgment to prove the existence of a tacit agreement, was to my mind drafted reflecting the perception of the delegate of Ecuador that what he was proposing was no more than what had already been "declared in Santiago" in 1952.

17. As the Judgment has concluded—correctly, in my view—that the 1952 Santiago Declaration in fact had *not* declared that the parallel starting at the boundary point on the coast constituted a maritime boundary, it seems reasonable to assume that what the Ecuadorian delegate was referring to in fact was the "principle of delimitation of waters regarding the islands", enshrined in Article 4 of the 1952 Santiago Declaration. Be that as it may, regardless of the thinking of the Ecuadorian delegate, the Judgment takes a position that no maritime boundary agreements had been reached in Santiago in 1952, other than those relating to islands. The *travaux* of the 1954 Agreement thus demonstrate that the language of Article I of the 1954 Agreement does not seem to endorse the reasoning on which the Judgment is based that a tacit agreement had arisen between the Parties during the period between 1952 to 1954. It is possible, though, that what took place in 1954 may have reflected some perception or confusion in the mind of some delegates at the CPPS conference as to exactly what had been "declared in Santiago" in 1952. But such perception or confusion has been dispelled and clarified by the Judgment.

18. The 1968-1969 lighthouses arrangements similarly do not provide "compelling" evidence of the existence of a tacit agreement establishing an all-purpose maritime boundary. As the Judgment itself acknowledges, what emerges from these arrangements is that the arrangements *proceeded* on the premise that a maritime boundary of some sort extending along the parallel beyond 12 nautical miles had "already exist[ed]" (Judgment, paragraph 99), without any specific language to that effect found in the arrangements concerned. The Judgment, quoting from the opening paragraph of a document which was signed by the delegates of the Parties to those negotiations for the purpose of making a number of practical submissions for the examination and determination of their respective Governments on the location of the lighthouses to be constructed, states as follows:

> "on 26 April 1968, following communication between the Peruvian Ministry of Foreign Affairs and the Chilean chargé d'affaires earlier that year, delegates of both Parties signed a document whereby they undertook the task of carrying out 'an on-site study for the installation of leading marks visible from the sea *to materialise the parallel of the maritime frontier* originating at Boundary Marker number one (No. 1)'" (Judgment, paragraph 96; emphasis added).

19. Based on this fact, the Judgment concludes that "[a]long with the 1954 Special Maritime Frontier Zone Agreement, the arrangements acknowledge that [a maritime boundary extending along the parallel beyond 12 nautical miles *already* exists]" (Judgment, paragraph 99; emphasis added). These arrangements are thus no more than a logical follow-up of the 1954 Agreement, and add nothing more (or less) to what the 1954 Agreement prescribes (or does not prescribe) about the nature of the parallel as a line of maritime demarcation.

20. In my view, for the Judgment to conclude from the language of the 1954 Agreement that the Parties reached a tacit agreement on their maritime boundary, it is essential that the Court is able to establish the following two points:

*(a)* that such agreement between the Parties on a maritime boundary extending along the parallel beyond 12 nautical miles came to exist between the Parties at some point in time on the basis of some legal acts or omissions of the Parties subsequent to the 1952 Santiago Declaration, but prior to the 1954 Agreement; and

*(b)* that the agreement on this maritime boundary is of such a nature as would amount to the definitive and all-purpose boundary constituting the lateral maritime border between the two neighbouring States of Peru and Chile for the purposes of the delimitation of their respective maritime zone entitlements (Judgment, paragraph 14; Final Submissions of Chile *(b)* (ii) and Final Submissions of Peru (1)).

21. It is my submission that the Judgment has not succeeded in establishing these two points.

**(b)** ***Where does this maritime boundary line terminate?***

22. The next question is the length to which this alleged maritime boundary line extends. This issue is inseparably linked with the first question. If the Parties, for whatever reason and under whatever circumstances, had come to accept the parallel of latitude as the definitive maritime boundary line for all purposes, as the Judgment assumes it to be on the basis of the 1954 Agreement and the 1968-1969 lighthouses arrangements, then there should be no reason to think that this line should terminate at a distance of 80 nautical miles from the starting-point. It could instead extend to the maximum of 200 nautical miles.

23. In this respect, a frequent reference is made in the Judgment to the fact that under the 1954 Agreement, whose purpose was specific and limited, such a line (or the acknowledgment of it) would not have been required beyond the distance of 80 nautical miles, because the maximum limit of the fisheries activities of Peru and Chile in those days did not go further than 80 nautical miles, as demonstrated by the statistics supplied by the United Nations Food and Agricultural Organization (FAO).

24. It is accepted that the real situation on the ground (or rather on the sea!) obtaining at the time of the 1954 Agreement and the 1968-1969 lighthouses arrangements at the relevant period — i.e., the period between the 1950s and 1970s — was as described in the Judgment. But "the real situation on the ground" relating to fishing activities should have no relevance to the consideration of this issue by the Judgment, if the reasoning of the Judgment were that a tacit agreement had come to exist as an all-purpose maritime boundary along the parallel of latitude. If the boundary which the Parties are supposed to have acknowledged were indeed an all-purpose one, it would be extremely difficult to argue that its length be limited by relying upon the evidence relating to fishing activities and to justify this conclusion that the boundary line along the parallel of latitude should stop at a distance of 80 nautical miles. As the Judgment quite rightly acknowledges, "the all-purpose nature of the maritime boundary . . . means that evidence concerning fisheries activity, in itself, cannot be determinative of the extent of that boundary" (Judgment, paragraph 111). Logically there should be no reason why the line should stop at 80 nautical miles, rather than extending to the 200-nautical-mile limit, as each of the Parties claimed in the Santiago Declaration.

25. If we start, on the contrary, from the premise that this boundary line should stop at some point less than 200 nautical miles for the reason that the real situation on the ground relating to the actual fishing activities obtaining in the sea area extended only to a certain point, then the rationale for relying upon that distance has to be based on the legal nature of the line not as a line of a permanent delimitation of the maritime boundary for all purposes, but as a line of a maritime zone for the specific purposes of creating the regulatory régime for fisheries in line with the specific purposes of the 1954 Agreement and of the 1968-1969 lighthouses arrangements.

It seems to me that the Judgment in the present case cannot escape this dilemma created by its own reasoning, as long as the Judgment is based on the presumed (but not proven) existence of a tacit agreement on the permanent maritime boundary.

26. Instead of basing its reasoning for the existence of a line of demarcation on the acknowledgment of tacit agreement on a maritime boundary of an all-purpose nature, the Judgment should base itself on a slightly modified legal reasoning along the following lines:

(1) The Court should reject, as the present Judgment does, the contention of the Respondent that the 1952 Santiago Declaration constitutes an agreement on the part of the Parties thereto to recognize and accept a maritime boundary line, following a parallel of latitude drawn from the point of the intersection of the existing land boundary between the States concerned with the low-water line of the sea.

(2) The practice of the States involved in the field of exercising national jurisdiction in the sea, in particular, relating to the fishing activities of Chile and Peru in the region, which gradually emerged in the years through the Santiago Declaration and beyond, as reflected in the processes of creating a special "Zone of Tolerance" in 1954 and of establishing lighthouses in 1968-1969, demonstrates the gradual emergence of a tacit understanding among the Parties to accept some jurisdictional delimitation of the area of national competence in the sea along the line of latitude, especially for the purposes of the regulation of fisheries. This acceptance of the zoning of the maritime areas would appear to have developed *de facto* specifically in the lateral

direction (along the coasts) to enclose sea areas belonging to each of the Parties for the purposes of fishing activities, which in those days were primarily focused on the fishing resources within the coastal waters (especially anchovy fishing). Those fishing activities were rapidly growing during this period in the waters within the distance of roughly 50 nautical miles off the coasts of Peru and Chile. This development of tacit acceptance took place, in addition to the Parties' explicit acceptance, achieved by the 1952 Santiago Declaration, of the extension of maritime zones in the horizontal (seaward) direction extending to 200 nautical miles for the joint defence of the natural resources of fisheries against the foreign *ocean going fishing fleets* engaged in deep water fishing off their coasts (e.g., whaling and tuna fishing). This practical need to enclose coastal fishing areas off the coasts of Peru and Chile, developed through the years after the 1952 Santiago Declaration, led the Parties to come to a series of related agreements adopted in the 1954 Conference in implementation of the Santiago Declaration.

The process of this tacit acceptance through State practice in the regulatory régime, primarily for the regulation of fishing activities through enclosing the sea areas for the respective Parties, came to develop apparently without taking the form of an agreement, tacit or express, between the Parties. This tacit acceptance came to be reflected in the form of a *de facto* delimitation of the lateral maritime boundary along the coasts of the neighbouring States of Peru and Chile, primarily to deal with the practical need for regulating coastal fishing activities of the area, along the line of parallel of latitude.

(3) As this has been a process of tacit acceptance that came to emerge in the form of a gradual development through the practice of the States concerned, without involving any formal act of effecting an agreement, tacit or express, through the years of the 1950s to 1970s, it is not possible nor necessary in my view to pinpoint when and how this tacit acceptance crystallized into a normative rule that the Parties came to recognize as constituting the legal delimitation of their respective zones of maritime entitlement in the coastal areas close to both countries, nor to define in precise terms how far this legal delimitation extended. It would seem safe to state, however, that such a normative rule did indeed develop, especially in relation to the regulation of fisheries, during the period between the 1950s and 1970s.

(4) The 1954 Agreement on the Special Zone of Protection thus cannot be considered as an agreement which *de novo* created a new maritime zone boundary on the basis of a parallel of latitude to delimit the lateral boundary between the States involved. It was not the *fons et origo* of the new maritime title based on the parallel of latitude and as such not constitutive of a new title to the States concerned. In this sense the position taken by the Judgment in my view is justified.

(5) Nor in my view was the 1954 Agreement declaratory, conferring as such the maritime titles of the respective States created by an already existing (but not identified or identifiable) agreement, which the Judgment declares to have been acknowledged by the Parties in the 1954 Agreement. The Parties in the 1954 Agreement accepted this line as a maritime boundary line primarily for the practical purpose of regulating conflicts between fishermen of the region and the States enforcing fisheries laws in their respective jurisdictions, which had the practical purpose of clarifying the lateral extent of the limits of their respective maritime jurisdiction (specifically on fishing) in the relevant maritime areas of their respective coasts.

In my view, the 1954 Agreement did not purport to acknowledge an existing agreement for the maritime zone delimitation that would have definitively defined the limits of the Parties' maritime jurisdiction for all purposes.

(6) The 1954 Agreement nonetheless has had an important legal significance in the process of consolidating the legal title based on tacit acceptance through practice, as that agreement constitutes, to the extent of its practical application, a significant, or even decisive, element in the process of turning State practice into a normative rule. Together with the 1968-1969 lighthouses arrangements, the 1954 Agreement thus formed an important basis for the consolidation of a maritime title based on tacit acceptance by both Parties through their subsequent practice in the area during the period following the 1952 Santiago Conference until the 1970s.

(7) This analysis should be sufficient also for explaining the reason why there should be a limit for such delimitation line based on the parallel of latitude referred to in this Agreement of 1954. The tacit acceptance was based in its origin on State practice at that time and thus had to be limited to the extent of the actual fishing activities conducted by the coastal fishermen of the two States involved. It prompted the Parties to accept this development as a normative rule, inasmuch as such tacit acceptance had to be operative with regard to a certain sea area where fishermen of the States concerned were actually engaged in fishing.

(8) It is for this reason that the precise distance out to sea to which the sea area belonging to the two States was delimited between them has to be determined primarily in light of the reality of the State practice developed through these years, especially in the field of fishing activities in the relevant areas, since they formed the legal basis for the emergence of the tacit acceptance of the delimitation of the maritime areas. On the basis of this consideration, I come to the conclusion that a delimitation line along the parallel going beyond 80 nautical miles would be excessive in consideration of the reality of the fishing activities in the region, taking into account the predominant pattern of fishing activities by Peru and Chile in the relevant period. According to the opinion expressed in the literature regarding the analysis of the fishing pattern of those days of the 1950s to 1970s, together with the oceanographic and biological analysis of the flow of the Humboldt Current and the pattern of the fishing activities focusing predominantly on anchovy fishing in the area in those days, the reasonable geographic limit in which such fishing activities could be presumed to have been in operation would seem to be within the distance of 50 nautical miles from the respective coasts of Peru and Chile. When the *distance* from the coast is translated into the *length* of the line of parallel of latitude, this line corresponds roughly to 80 nautical miles from the point where the land boundary between Peru and Chile meets the sea (cf., Judgment, paragraphs 103-111).

27. I am therefore prepared to accept the figure of 80 nautical miles as the length of the parallel line to be drawn from the starting-point where the land boundary between the two countries reaches the sea as most faithfully reflecting the reality of State practice as primarily reflected in the fishing activities of the region in those days, when the parallel line of demarcation came to form a normative rule. On this reasoning, I find it difficult to accept the position that this line should extend to 100 nautical miles.

28. On this basis of analysis, the argument based on the consideration of equitable allocation of the entire sea area in dispute between the two contending States should have no place in our consideration of the problem of how far this line of parallel of latitude should extend. As this line dividing the jurisdictional waters of the two Parties along the parallel is based on the tacit acceptance of the Parties, and thus to be regarded as the line of delimitation by agreement of the Parties and as such lying beyond the scope of the general principle of equitable allocation as enunciated by the United Nations Convention on the Law of the Sea (Arts. 74 and 83), the consideration of equitable principles in relation to this part of the area in question is irrelevant and should play no role in the Court's consideration of the issue as far as the maritime delimitation of

this part of the maritime area in dispute between the parties is concerned. Such an approach cannot be justified as offering any legal justification on which the present Judgment should proceed in arriving at its conclusion.

*(Signed)* Hisashi OWADA.