DECLARATION OF JUDGE SKOTNIKOV

1. I have voted in favour of the Court's conclusions set forth in the operative clause. However, I do not agree with the Court's treatment of the issue of the extent of the maritime boundary between Peru and Chile.

2. I support the Court's conclusion that, prior to the signing of the 1954 Special Maritime Frontier Zone Agreement, there was a tacit agreement between the Parties concerning a maritime boundary between them along the parallel running through the point at which their land frontier reaches the sea. The emergence of such a tacit agreement is evidenced by certain elements of the 1947 Proclamations and the 1952 Santiago Declaration. This agreement was cemented in treaty form in the 1954 Special Maritime Frontier Zone Agreement, which states that the maritime boundary along a parallel already existed between the Parties (see Judgment, paragraphs 90 to 91).

3. I agree that the 1954 Special Maritime Frontier Zone Agreement, which acknowledged the existence of the tacit agreement, did leave some uncertainty as to the precise extent of the maritime boundary (see Judgment, paragraph 151). However, the Court could have dealt with this in the same manner that it resolved the issue of whether the maritime boundary is all-purpose in nature, namely, that "[t]he tacit agreement, acknowledged in the 1954 Agreement, must be understood in the context of the 1947 Proclamations and the 1952 Santiago Declaration" (Judgment, paragraph 102). Regrettably, the issue of the extent of the maritime boundary is considered by the Court outside this context.

4. To support its conclusion that the agreed maritime boundary does not extend to the length of the maritime zones claimed unilaterally through the 1947 Proclamations and then established in the 1952 Santiago Declaration, the Court makes, *inter alia*, an argument to the effect that the state of general international acceptance concerning a State's maritime entitlements during the 1950s indicates that the Parties were unlikely to have established their maritime boundary running to a distance of 200 nautical miles. I do not find this logic to be convincing. First, the 1947 Proclamations and the 1952 Santiago Declaration demonstrate that the Parties were willing to make maritime claims which did not enjoy widespread contemporaneous international acceptance. Second, establishing a maritime boundary between the Parties in the early 1950s to a distance of 200 nautical miles could only be understood as an agreement *inter partes*, enforceable primarily *inter se*. It is difficult to see why this would be more controversial than the 200-nautical-mile claims in the 1947 Proclamations and in the 1952 Santiago Declaration, which purport to create maritime zones to be defended against third States.

5. The Court treats the various practices discussed in the Judgment, such as fisheries and enforcement activities, as largely determinative of the extent of the agreed maritime boundary. I fail to see how the extent of an all-purpose maritime boundary can be determined by the Parties' "extractive and enforcement capacity" (Judgment, paragraph 149) at the time of the signing of the 1954 Agreement, which merely acknowledged the existing maritime boundary.

6. Even if one accepts the line of reasoning adopted by the Court, the determination of the figure of 80 nautical miles as the extent of the agreed maritime boundary does not seem to be supported by the evidence which the Court finds relevant. For example, the Court notes, basing this finding on the location of fish stocks and a reasonable estimation of the range of small fishing vessels, that Peruvian vessels in the early 1950s would have been operating approximately 100 nautical miles from the starting-point of the maritime boundary in the area which lies at a

distance of 60 nautical miles from the principal Peruvian port of Ilo (see Judgment, paragraph 108). Accordingly, the evidence relied upon by the Court supports the notion that the extent of the agreed maritime boundary to be derived from the Parties' fishing practice would have been at least 100 nautical miles. As to the evidence concerning the potential location of fish stocks in the early 1950s (see Judgment, paragraphs 105 to 107), it does not convincingly demonstrate that the extent of the maritime boundary must have been 80 nautical miles, as opposed to any other figure.

7. However, given that the Parties' treatment of the extent of the agreed maritime boundary lacks the clarity which would have been expected in respect of an issue of that importance, it has been possible for me to join the majority in voting in favour of the third operative paragraph.

(Signed) Leonid SKOTNIKOV.