

Practical Steps in Maritime Boundary Negotiations

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Fundamental Need for all States (and Users)



CERTAINTY

Practical Steps in the Negotiating Process

- 1. The Boundary Delimitation Process**
- 2. The Negotiating Team**
- 3. Identifying the National Interests**
- 4. Developing the Negotiating Positions**
- 5. Technical Considerations**
- 6. Domestic Political Considerations**
- 7. Elements of a Good Boundary Agreement**

Boundary delimitation process

**Boundaries should be established
by agreement**

Boundary treaty : permanent

Delimitation Process

- A. Bilateral negotiations: preferred, but not always successful**
- B. Referral to dispute settlement**
 - A. As preparations are made for negotiations team needs to be mindful of possible arbitration.**

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The Negotiating Team

Head of Negotiating Team:

1. Picked by President/ PM/ Foreign Minister
2. Legal Adviser of Foreign Ministry
3. Head of Country Bureau
4. Minister of one of the Agencies
(Fisheries, Oil and Gas, MFA)

The Negotiating Team

Members of the Team: [usually only government officials]

- **Lawyers**
- **Technical experts**
- **Substantive experts (fisheries, oil & gas, defense/security, enforcement)**

Who identifies national interests ?

Cabinet level

Inter-agency group, headed by high level officials

Experts at working level

**Agencies: Foreign Ministry, Defense, Attorney General,
Transportation, Fisheries, Oil & Gas, Coast Guard, Customs**

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Identifying national interests

1. **International relations with neighbors**
2. **Economic/commercial interests**
 - **Fisheries**
 - **Oil & Gas**
 - **Hard minerals/other**
 - **Transportation: surface, pipelines**
 - **Tourism**
 - **Energy**
3. **Military & strategic**
4. **State/province interests**

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Developing the Negotiating Position(s)

- **Establish overall strategy (National Ocean Policy)**
- **Boundary positions should be consistent**
- **Should consider boundaries within overall foreign policy context**
- **Should reflect identified national interests**

Law of the Sea Convention

Territorial Sea: **Predominance for an equidistant line**

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...”

Exception: “by reason of historic title or other special circumstances...”

Law of the Sea Convention

Exclusive Economic Zone and Continental Shelf

Articles 74 (EEZ) and 83 (continental shelf)

“The delimitation of the exclusive economic zone (continental shelf) between States with opposite of adjacent coasts shall be effected by agreement on the basis of international law, ...in order to achieve an equitable solution.”

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Technical Considerations

- 1. Relevant area where boundary delimitation will occurred**
- 2. Relevant coastlines [concavities, peninsulas]**
- 3. Presence of islands**
- 4. Does an equidistant line favor one Party over the other?**
- 5. Baselines**
- 6. Historical activities**

Technical expert(s) should have experience in GPS, software to calculate areas, distances, identify and define accurate coastlines, equidistant lines. Charts to be used to illustrate.

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Consultations ??

Questions to ask when developing the National boundary positions:

- ❖ Does the Constitution require that the treaty be ratified?
- ❖ If yes, by whom: a Senate or other ruling body?
- ❖ If yes, then politically, it would be wise to keep this body informed of negotiating process, and to seek advice [brief before and after each round of negotiations– level of detail is a consideration.]
- ❖ Advice from affected industries should be obtained.

Consultations

- Public knowledge of on-going talks should be limited**
- Do not create unrealistic expectations in the public domain**
- High expectations lead to difficulties of compromise at the negotiating table**

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Elements of a Good Boundary

May be years later before a valid
assessment can be made

Broad assessment:

- **National perspective:** reflects the national interests that have been identified; can be ratified
- **Bilateral perspective:** States remain amicable and on friendly terms as a result of negotiations

Elements of a Good Boundary

Treaty Language

- All users can apply treaty provisions in a consistent and identical manner
- Did the treaty achieve the long-term goals of both Parties: natural resources, security, etc.
- Legal terminology is comprehensive and understandable
- Technical information is sufficient and applicable

Treaty Technical information

- **Geodetic datum: impact the positioning of any boundary points. [WGS 84- popular]**
- **”Straight lines”: geodetics: rhumb lines; arcs of great circles**
- **Baseline information**
- **Charts (usually attached to treaties for “illustrative purposes”); treaty language takes legal precedent if disputes arise.**
- **Any geographic description needs to be precise (labels for features, directions, etc).**

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END