Decisions of Courts and Tribunals to Resolve Complex Maritime Boundary Situations

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Third-party settlement of complex maritime boundary disputes

- **Case Study #1:** *Canada v. United States (Gulf of Maine)*
  - Chamber of the International Court of Justice (1984)
  - Submitted by special agreement between the parties

- **Case Study #2:** *Romania v. Ukraine (Case Concerning Delimitation in the Black Sea)*
  - International Court of Justice (2009)
  - Instituted by Romania pursuant to bilateral agreement that provided for submission of maritime boundary dispute to ICJ if certain conditions were met
Gulf of Maine (Canada v. United States)

Background:

- LOS Convention not yet entered into force
- 200 nm EEZ still relatively new development; not much state practice for EEZ delimitation

Parameters set by the parties:

- Requested that the Chamber delimit a single, all-purpose boundary between the two countries (for both water column and shelf)
- Specified the starting point for the boundary at approximately 30 nautical miles offshore (avoiding sovereignty dispute over Machias Seal Island and North Rock)
Gulf of Maine (Canada v. United States)
Considerations raised by the parties:

- Coastal configuration and proportionality
- Geology and geomorphology
- Historical fishing
- Practice of the parties
- Marine ecology
- Social and economic considerations
- State practice
- Methodology (e.g., use of equidistance, perpendiculars)

Gulf of Maine (Canada v. United States)
Gulf of Maine: Positions of the Parties

• Ongoing debate over the ‘equitability’ of equidistance
  • Canada had been proponent of equidistance as the default maritime boundary delimitation method in the EEZ and continental shelf
  • U.S. did not favor any particular boundary delimitation methodology
Gulf of Maine:
Positions of the Parties

MAP NO. 2
Limits of Fishing Zones and Continental Shelf Claimed by the Parties at 1 March 1977
(see paragraphs 68-79)

United States line

Canadian line

MAP NO. 3
Delimitation Lines Proposed by the Parties before the CRM
(see paragraphs 71, 77-78)

United States line

Canadian line
Gulf of Maine: Chamber’s approach to single, all purpose boundary

- “a delimitation which has to apply at one and the same time to the continental shelf and to the superjacent water column can only be carried out by application of criterion, or combination of criteria, which does not give preferential treatment to one of these two objects, and at the same time is such as to be equally suitable to the division of either of them.” para. 194
- Divide the maritime boundary into three segments
  - What is “equitable” might vary in different maritime spaces
Gulf of Maine: Chamber’s approach

- Segment #1: Point A (starting point determined by the parties) to Point B (pivot point in the Gulf)
  - Area of “lateral adjacency” and “the most appropriate location for affecting as far as possible – since there is no special circumstance standing in the way – an equal division of the area overlapping created by the lateral superimposition of the maritime projections of the coasts of the two states.”
  - Rejected equidistance due to numerous isolated rocks along the coast that would either have to be used or discounted, and because of the sovereignty dispute over Machias Seal Island; adopted a line running at an azimuth of 139° from Point A (the bisector of an angle determined by perpendiculare to the general direction of the coasts within the Gulf).
• Segment #2: Point B (pivot point in the Gulf) to Point C (closing line), referred to “as the central and most decisive segment for the whole delimitation line,” given the parties’ interest in fisheries resources in Georges Bank
  • Chamber started with an equidistance line, and then adjusted it in favor of the United States to account for coastal lengths, given that “the back of the Gulf is entirely occupied by the continuous coast of Maine.” Para 218
    • “[I]t is in the Chamber’s view impossible to disregard the circumstance, which is of undeniable importance in the present case, that there is a difference in length between the respective coastlines of the two neighboring States which border on the delimitation area.” Para 218
  • Canada’s Seal Island given half effect
Gulf of Maine: Chamber’s approach

- Segment #3: Point C (closing line) to Point D (outer limit of the U.S. 200 nm EEZ)
  - Established using perpendicular to the closing line of the Gulf
Gulf of Maine: Maritime Boundary
Gulf of Maine: Maritime Boundary
Key Considerations:

- Coastal geography (coasts of Romania and Ukraine both adjacent and opposite in the relevant area)
- Relevance of Ukraine’s Serpents’ Island—situated approximately 20 nautical miles east of Ukraine
- Relevance of agreements in force between the parties
Black Sea (Romania v. Ukraine): Positions of the Parties
• Court’s “delimitation methodology” (the three-stage approach)

  • Establish provisional equidistance line using “the most appropriate points on the coasts of the two States concerned”

  • Consider whether any factors call for the adjustment of the provisional equidistance line in order to achieve an equitable result

  • Verify that the line does not lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime areas of each State by reference to the delimitation line
Black Sea (Romania v. Ukraine): Court’s Approach

- Court selected basepoints on both coasts
  
  - “In this stage of the delimitation exercise, the Court will identify the appropriate points on the Parties’ relevant coast or coasts which mark a significant change in the direction of the coast, in such a way that the geometrical feature formed by the line connecting all these points reflects the general direction of the coastlines.” Para. 127

  - “The Court should not base itself solely on the choice of base points made by one of [the] Parties. The Court must, when delimiting the continental shelf and exclusive economic zone, select base points by reference to the physical geography of the relevant coasts.” Para 137
• Role of Serpents’ Island:

  • The island “should have no effect on the delimitation in this case, other than that stemming from the role of the 12-nautical-mile arc of its territorial sea,” which was previously established by agreement between the parties. Para 188
  
    • Serpents’ Island not a “fringing island” and therefore should not be considered part of Ukraine’s coastline for purposes of constructing the provisional equidistance line.

  • Court avoided reaching a conclusion on the island’s entitlement to an EEZ and continental shelf under Article 121 of the Law of the Sea Convention
Black Sea (Romania v. Ukraine): Construction of the Provisional Equidistance Line
Effect of Serpents’ Island
Black Sea (Romania v. Ukraine): Maritime Boundary

- **Point 1:** Intersection of the outer limit of the territorial sea of Romania with the territorial sea of Ukraine around Serpents’ Island as stipulated in Article 1 of the 2003 State Border Regime Treaty
  - Point 1 to Point 2 follows the arc of the 12 nautical mile territorial sea around Serpents’ Island

- **Point 2:** Intersection of arc around Serpents’ Island with a line equidistant from Parties’ adjacent coasts

- **Point 3:** Continues the equidistance line drawn from Parties’ adjacent coasts

- **Point 4:** Turning point, where Ukraine’s opposite coast turns the equidistance line south-southeast

- **Point 5:** Continues equidistance line drawn from Parties’ opposite coasts, until it “reaches an area where the right of third States may be affected”
Black Sea (Romania v. Ukraine): Maritime Boundary