[translation (in relevant part) from the original in Dutch]

Decree of 8 May 1986, containing general rules concerning the exploration for and exploitation of minerals (Mining Decree)

[original text at SCM, Vol. III, Annex 54]

Articles 1(h), 2(6) and 71

Article 1
In this Decree, the following terms mean:
[……]
h. Mining activities:
Prospecting, exploration, exploitation, small-scale mining and exploitation of building materials.
[……]

Article 2
[…..]
(6) Nobody is allowed to conduct mining and related activities otherwise than in accordance with legislation concerning mining. These activities may only be conducted after having obtained a title from the competent authority, as defined in Article 6.
[…..]

Article 71
Anyone who:
a. conducts mining activities without having been granted a mining title;
[…..]
will be punished with imprisonment for a maximum of two years and/or a monetary penalty of a maximum of hundred thousand guilders.

Rights to Oceanic Resources

Deciding and Drawing Maritime Boundaries

Edited by

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and

LOUIS DeVORSEY, JR.

A Dean Rusk Center Monograph

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Geographic Considerations in Maritime Boundary Delimitations

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1. INTRODUCTION

Anyone who has been involved in any stage of establishing a maritime boundary realizes that the process can be exceedingly complex. The geographical and technical aspects of maritime boundary delimitation are of first importance since one should have full appreciation of the area that is to be delimited prior to getting into the legal and political stages of the delimitation process.

While it often has been said that every boundary region is unique, such an observation is not very useful when seeking a boundary delimitation methodology. For that reason I would like to develop first some general categories into which boundaries can be placed. The categorization hopefully may assist in developing a framework from which comparative analysis of negotiated boundaries and potential boundaries can be made. Secondly, I will address several technical items that should be included in any maritime boundary agreement. Several boundary disputes have arisen due mainly to the omission of technical information in the original treaty or arbitration award. Although a limited amount of theory may be detected from my remarks, most of my observations will be based on state practice.

II. TYPES OF BOUNDARIES

A few years ago I attempted to inventory the maritime boundaries of the world. Several definitional questions arose which, depending on the answers, influenced my final count. I counted 377 potential boundaries. These included those that had been negotiated or arbitrated and those that were still unresolved. I am sure that others would arrive and indeed have arrived (there have been several people who have attempted to do this counting exercise) at different results. If I remember my criteria correctly, I counted negotiated continental shelf boundaries as completed boundaries. However, since my inventory I realize that this may not necessarily reflect the actual situation since one or both states may desire a boundary dividing the respective territorial seas, fishing zones, or exclusive economic zones (EEZs) in

D. G. Dallmeyer and L. DeVorsey, Jr. (eds.), Rights to Oceanic Resources. 3–14.

a manner different than the way the continental shelf boundary was developed.

Turkey, for example, has resisted Soviet attempts to convert their Black Sea continental shelf boundary to an EEZ boundary. From my reading on the problem I believe this is due mainly to historical fisheries that Turkey has which lie closer to the Soviet coast. On the other hand, some states, such as Finland and the Soviet Union in the Baltic, have agreed to use their previously negotiated continental shelf boundary as their maritime boundary separating water column jurisdiction. It also appears likely that later this year when the United Kingdom extends its territorial sea to 12 miles, that they and France will transform, by treaty, a part of their continental shelf boundary that is situated in the Dover Strait into a territorial sea boundary. Thus, my count of 377 that I took about a decade ago may be on the low side. Conversely, several potential boundaries in my count may not come to fruition due to the delimitation methods used by particular states. When one counts potential boundaries, equidistant lines, being mathematical constructs, are the easiest hypothetical boundaries to create. So when countries negotiate a non-equidistant boundary, some potential boundaries may become moot.

The former occurred when the Netherlands and Venezuela negotiated the boundary in the south-central Caribbean. Although their boundary approximates an equidistant line where it runs between the Netherlands Antilles and the Venezuelan mainland, the line deviates substantially from an equidistant line as it proceeds northward into the central Caribbean, to Venezuela's favor. Thus, the northern terminus of that boundary is not an equidistant point between those two states. Consequently, a potential Netherlands-U.S. boundary (between the Netherlands Antilles and Puerto Rico) is no longer required since the U.S. and Dutch maritime zones no longer overlap.

I seem to be drawing out a point the reader may have concluded already. The value of knowing the absolute count for the number of boundaries may be limited. More important may be (1) the knowledge of the types of boundaries that have been delimited, (2) the geographical circumstances and any special treatments given to them, and (3) the methods used. An important first step in a comparative boundary analysis will be to understand fully the geographical features of the boundary region to be delimited. If a comparative analysis is to be made, the characterization of the boundary area usually will develop and change as more is known of other delimitations.

In the course of preparing for the *Gulf of Maine* arbitration, we reviewed and analyzed the state practice of world maritime boundaries with particular emphasis on identifying similarities and differences to the Gulf of Maine. This identification of similar and different geographical characteristics was done, of course, to support our position before the Chamber. It should be pointed out that in our particular review of boundaries in the comparative analysis of the geographical characteristics, we had a particular goal: to convince five judges that our boundary in the Gulf of Maine was, by all tests, a line based on equitable legal principles and suited to

the geographical realities of the region. I would like to think that our geographical analyses and subsequent presentations before the Court were objective and reasoned, and that we did not "refashion" geography to our liking. Needless to say that in preparing for either a round of bilateral negotiations or arbitration, the temptation exists to view the geography in a biased fashion.

III. GEOGRAPHICAL CONSIDERATIONS

What then are some of the geographical situations that have created delimitation difficulties for states? How have states negotiated or judges arbitrated boundaries taking into account (or in some cases failing to take into account) these geographical difficulties?

A. Location Factors

The first geographical factor that should be identified is the locational relationship between, or among, states in the region. This relationship essentially will determine the type of boundary delimitation required and perhaps suggest an appropriate methodology. Coastal states sharing a land boundary, at a minimum, will need a territorial sea boundary. Depending on the location of a third state, additional maritime boundaries will be needed to separate other maritime jurisdictions permitted under international law. Neighboring states not having a common land boundary may still need a delimited territorial sea and other maritime zones depending on the distance between their coasts, and in some instances non-adjoining states on the same coast may have a boundary.

B. Opposite v. Adjacent Relationships

The geographical relationship between states, (i.e., whether states are opposite or adjacent to each other) often is not apparent or clearly definable. States indeed are adjacent to each other at the point where their land boundary reaches the coast. States are indeed opposite where their coastlines face each other and are nearly parallel. But other geographical situations are not as clearly defined.

In its judgment in the *North Sea Continental Shelf Cases*, the ICJ made an interesting observation on this subject of adjacency. At one point in its deliberation the court said that Denmark and the Netherlands were *neither* opposite nor adjacent states.[1] The two states do not share a land boundary, so they are not adjacent based on that criterion. At the time the two states took their respective disputes with the Federal Republic of Germany to the Court, there existed a negotiated Denmark-Netherlands continental shelf boundary. The Court's statement can be read to mean

either that (1) states can have a geographical relationship other than adjacency or opposition, or (2) a continental shelf boundary should not exist between Denmark and the Netherlands. Thus, from a boundary perspective the two states do not possess the qualities of adjacency or opposition.

Eight years later when a court of arbitration decided the *Anglo-French Arbitration*, further statements were made on the idea of adjacency. When determining whether the United Kingdom and France were opposite or adjacent to each other, the Court stated that it "must have regard to the actual geographical relation to each other and to the continental shelf at each position along the boundary."[2] Thus two elements of adjacency were identified: the relationship of the states to each other – the coastlines – and the relationship of the state to the continental shelf sitting off its coast.

What meaning and significance this distinction between adjacent and opposite states takes on is not always readily apparent. However, as certain delimitation principles and methodologies have been developed, it has been seen, by both technical experts and lawyers, that many adjacent state situations require greater flexibility in application of these principles and methodologies to create an equitable boundary. The need for flexibility becomes particularly important as boundaries are extended beyond the territorial sea.

The 1982 Law of the Sea Convention (LOS) addresses territorial sea boundary delimitations between opposite or adjacent states in Article 15 which states:

> 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.

This provision essentially reproduces Article 12 of the Convention on the Territorial Sea and the Contiguous Zone. Thus, a state, failing agreement, may not extend its territorial sea limit beyond a median line unless by reason of historic title or other special circumstances. However, similar to a lot of concepts, the concepts of historical title and special circumstances are vague and are subject to interpretation.

Generally, however, it has been believed that because of the relatively narrow breadth of the territorial sea, lines based on equidistance would result in an equitable boundary. The effects of certain geographical features such as offshore islands, coastal promontories, or convex coasts become accentuated as boundaries extend further seaward.

The Federal Republic of Germany (FRG) effectively illustrated the distorting

effect of promontories to the ICJ in the 1969 Continental Shelf Cases with Denmark and the Netherlands.[3] Germany presented a graph which shows the effect the presence of a headland has on an equidistant line. (See Figure 1.) With a straight coastline and no headland, the equidistant line would be the perpendicular line to the coast at the land boundary terminus. As the headland of one state protrudes further seaward, the equidistant line "diverts" toward or "encroaches" upon the neighboring state (State B on graph). This diversion or encroachment increases the further seaward the line extends.

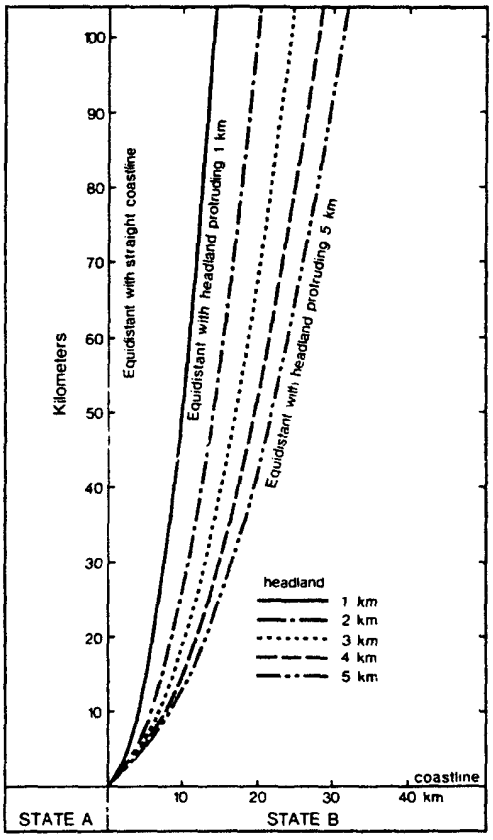


Fig. 1. Effect of the presence of a headland on an equidistant line. (adapted from the Oral Arguments of the Federal Republic of Germany, 1969 *Continental Shelf Cases*).

The United States in its *Gulf of Maine* Memorial, extended the FRG graph to 200 nautical miles. (See Figure 2.) As we stated in our case, "a deviation from a line drawn perpendicular to the general direction of the coast of only 5 kilometers (2.7 nautical miles), at a distance of 5 kilometers from the coast, will grow to one of 44 nautical miles (81 kilometers) at a distance of 200 nautical miles (370 kilometers)."[4]

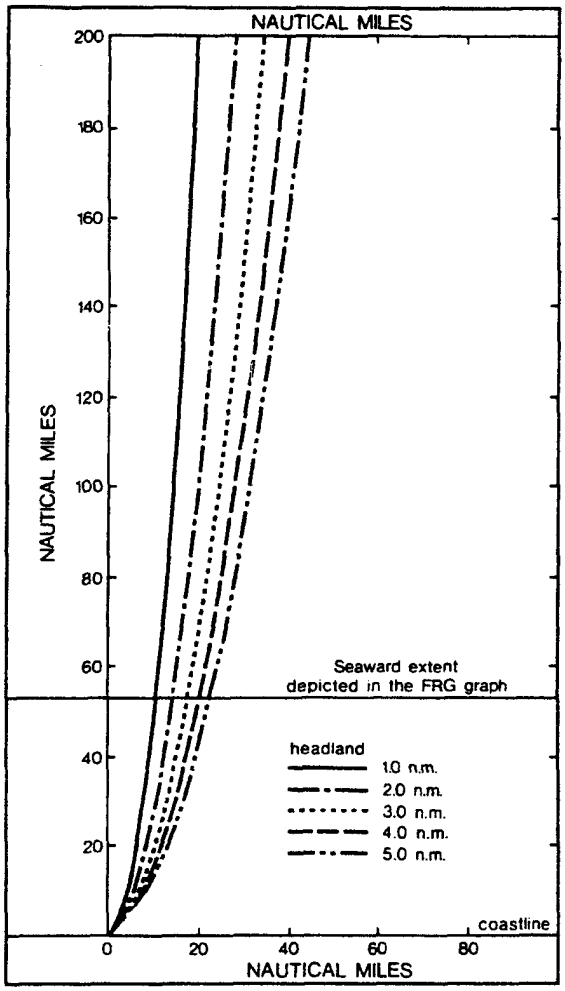


Fig. 2. Extension of previous graph to 200 nautical miles indicating seaward encroachment of "equidistant" line upon the neighboring state. (adapted from the United States Memorial, *Gulf of Maine* case).

C. Islands

The location of islands in a boundary region has been a source of many disputes. Usually the problem arises when an island or group of islands of one state is situated in such a location as to cut off what otherwise would be another state's proper extension of maritime jurisdiction. States have resolved this dilemma in several ways of which the following provides a sampling.

In several delimitation agreements islands have been recognized as warranting some maritime jurisdiction. For example, in the Italy-Tunisia continental boundary agreement, the Italian islands of Pantelleria, Linosa, and Lampedusa were given a full territorial sea of 12 nautical miles and a one-nautical-mile belt of continental

shelf. The Italian island nearest to the Tunisian coast, Isolotto Lampione, received only a territorial sea. In the creative Australia-Papua New Guinea treaty, the states agreed to give small Australian islands located in the northern part of the Torres Strait, near the Papua New Guinea coast, a territorial sea of three nautical miles but no continental shelf.

Saudi Arabia has negotiated two continental shelf boundary agreements in which special consideration was given to islands. With Iran, certain islands were accorded only the territorial sea and with Bahrain certain small islands and low-tide elevations were ignored completely in the creation of a boundary.

There are several ongoing negotiations that have become snagged due to the location of islands and subsequent effect that these islands have on a delimitation based on the equidistant methodology. Canada and France may arbitrate their maritime boundary between the French islands of St. Pierre and Miquelon and Newfoundland. In 1972 the two states successfully negotiated the territorial sea boundary. There the boundary runs generally in an east-west direction between the two French islands and Newfoundland. However, a dispute arose as they tried to determine how much maritime jurisdiction these two French islands, which are obviously far from the French mainland coast, should get to the south where they cross over a substantial area of relatively shallow sea, an area of less than a hundred fathoms.

Other examples of where the presence of islands are causing delimitation problems include the Colombia-Venezuela delimitation, particularly at the mouth of the Gulf of Venezuela and the impact of Venezuela's Los Monjes islands on an equidistant line; the Greece-Turkey Aegean problem; the Ireland-U.K.-Rockall Bank situation which seems to be becoming more complex by the month depending upon how many countries are joining that dispute; Sweden-Soviet Union and the Baltic-Gotland Island problem; and there are several others including situations where not only is the effect of islands a role but sovereignty of the islands themselves may be in dispute. In such a situation the boundary delimitation process would be at a standstill until the sovereignty issue is resolved.

D. Coastal Configuration

The coastal configuration in the vicinity of the required maritime boundary can have a significant impact on the choice of delimitation methods. Configuration becomes particularly critical for states sharing a land boundary where the coastline changes direction at or near the land boundary terminus. Two good examples of this appear in the North Sea and in the Gulf of Maine. In the North Sea the FRG contended that it should not be deprived of its natural prolongation merely because its coastline is concave.

To digress for a moment, I would like to point out a couple of aspects of

Germany's argument: its use of cartography to help show its dilemma. Germany presents its boundary situation most effectively by showing the two equidistant lines, that is between the FRG and Denmark on the one hand, and the FRG and the Netherlands on the other, converging in front of its coastline. The map it presents is not shown with a normal north-south orientation, but rather the top of the map is west.[5] (See Figure 3.) The effect of this orientation is to direct one's attention to the point where the equidistant lines converge.

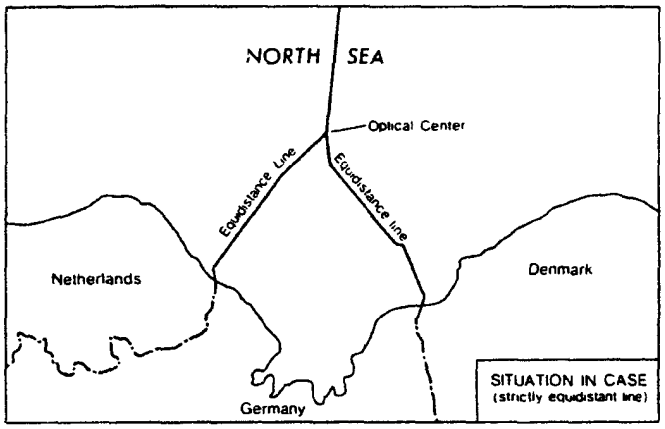


Fig. 3. Map presented by Federal Republic of Germany to accentuate the resulting inequity if equidstant lines are used to delineate the maritime boundary. Rather than the normal north-south orientation, north lies to the right side of the map. (adapted from the German Memorial, 1969 *Continental Shelf Cases*).

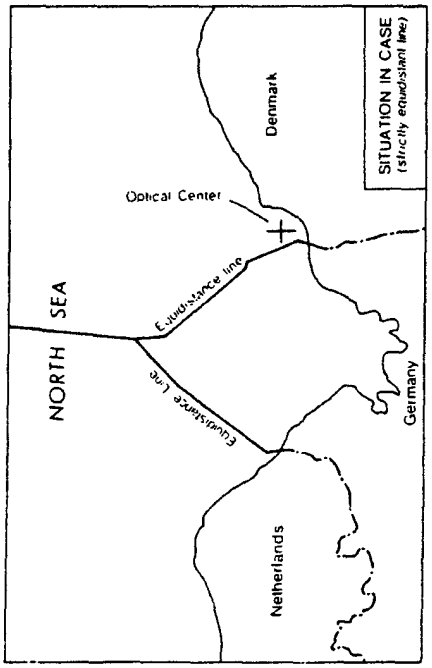


Fig. 4. Identical map shown in normal north-south orientation. Loss of visual impact is obvious.

One element in map design is that "the optical center of a map is a point slightly (about 5 percent) above the center of the boundary shape of the map border."[6] According to this principle, the "optical center" of the German map is at the point of convergence. By turning the map 90 degrees to the normal north-south orientation the "optical center" would be situated approximately at the seaward terminus of the Denmark-FRG land boundary. (See Figure 4.) Loss of visual impact is obvious.

Before leaving the North Sea I would like to mention another cartographic and geographic device that Germany used to accentuate its great loss due to the coastal configuration. Germany developed most of its arguments using a macro-geographic scale. Throughout the proceedings Germany attempts to discuss its continental shelf boundaries in terms of the entire North Sea. By developing its argument on the entire North Sea, Germany is able to show to the Court that it would receive a

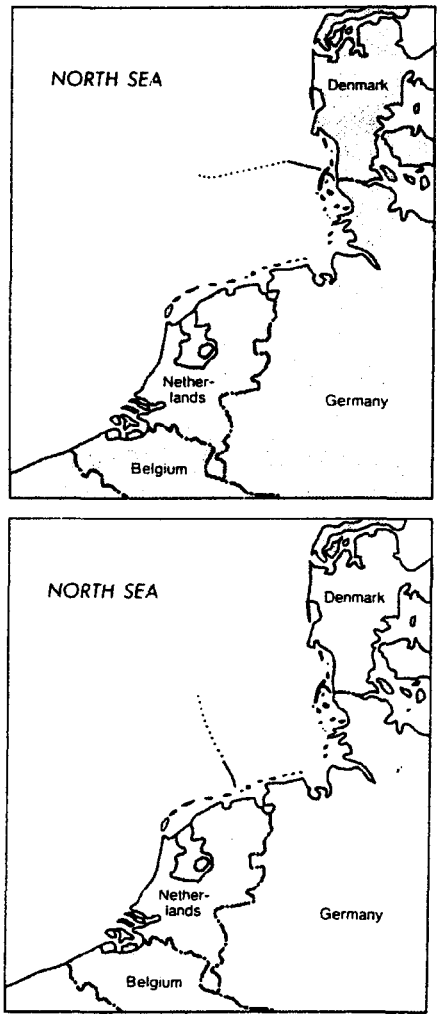


Fig. 5. Additional loss of visual impact of equidistant lines illustrated separately.

mere 1/25 of the North Sea continental shelf using the equidistant method. By combining the two cases against Germany into one proceeding, Denmark and the Netherlands allow Germany to argumentatively and cartographically focus the areal scope of the court cases. Throughout their arguments both Denmark and the Netherlands categorically state that each boundary must be considered on its own merits. Even though the Court mentions that there exist two separate cases, it would be hard to deny that the two equidistant lines, shown on the same map, do "look" unfair to Germany. Conversely, maps showing each equidistant line on its own do not "look" bad for Germany. (See Figure 5.) Thus, the mental image of the entire area is planted early and nurtured throughout the proceedings by the Federal Republic of Germany.

Coastal configuration was a major geographical consideration for the U.S. in the *Gulf of Maine* case. The U.S. argued that an equidistant line did not produce an equitable solution due, in large measure, to the fact that there was a major change in the direction of coasts at the land boundary terminus. Though Canada has a shorter coastal front facing the Gulf of Maine, the southwestern coast of Nova Scotia, it was getting a disproportionate share of the Gulf of Maine using the equidistant method.

I do not intend to say much more on the *Gulf of Maine* case but I would only point out two things. First, the concept of scale. I refer back to the manner in which Germany effectively developed its boundary arguments on a macro-geographic scale using the entire North Sea to emphasize how little it would receive employing the equidistance method.

Many of the arguments presented by both Canada and the United States were based on certain levels of geographic scale. Assertions involving geographical presentations, such as coastal fronts, general direction, and affected areas, all required a determination of which part of the coasts were to be included in this dispute. Disagreements between the two sides arose on this question. For example, the question as to whether or not the Bay of Fundy was part of the Gulf of Maine for the purpose of this delimitation was very important. The answer affected several of the boundary theories placed before the court by both sides including the calculation of proportionality figures.

Secondly, the *Gulf of Maine* case is filled with geography. For a more complete review of possible geographic considerations of boundary delimitation I recommend a review of the entire set of pleadings of both parties. It is also becoming apparent from an analysis of other arbitrations that geography, particularly aspects related to coastline characteristics, do receive serious analysis by the judges.

IV. GEOGRAPHIC CONSIDERATIONS IN DRAFTING TREATIES

Let me conclude by giving a quick review of some of the geographical-technical issues that should be a part of any negotiator's checklist. In this modern age of technology, users of marine space are becoming quite sophisticated in knowing exact positions at sea. Precision in positioning will vary according to the activity. Those involved in hydrocarbon exploration and exploitation, for example, are achieving a phenomenal position precision of a meter or less. In any case, maritime boundary agreements must have unambiguous and technically complete language that is satisfactory to both states and applicable to the users.

A clear, yet not always appreciated, need is to develop a line that will be applied by everyone in the same way. This may not always occur if charts or information based on different spheroids or geodatums are used. The geodesists have come a long way in understanding an defining the dimensions of the earth, or geoid. But in establishing a "best fit" of a spheroid (which is a mathematically-defined surface) to the geoid for a given area in the world, countries have developed different spheroids. Similarly, countries have developed different horizontal and vertical datums by which they developed their charts.

While it appears that the World Geodetic System (WGS) will be the preferred system to use in boundary delimitations, the important factor is that the countries agree to utilize a common system. The positioning problem is particularly acute in areas of the world lacking recent charting. The Pacific is an area where geodetic work is underway. Many of the land positions found on current Pacific charts are based on astronomical techniques used by 19th century whaling expeditions. Although the chart itself may say revised 1978 or 1980, the revision may indeed only apply to a new location of a light or a LORAN system being placed on top of the chart. It may not necessarily reflect the accurate position of the land territory.

A. Straight Lines

Boundaries usually are described in agreements as a series of straight lines connecting geographical coordinates. Unfortunately, these "straight lines" are not defined adequately which, in some situations, have led to disputes. Common types of straight lines are great circle arcs, small circle arcs, loxodromes or rhumb lines, and geodesics. The difference between any two types of straight lines may be significant, depending on length and direction. The British, for example, believe they lost several hundred square nautical miles to the French when the last segment of their arbitrated line was described as a rhumb line instead of a geodesic or great circle.

B. Other Geographic Terms

Finally, I note a related problem encountered in interpreting existing boundary agreements: the appearance of the non-descript geographical term that defines the boundary. Terms like mouth of a river, navigable channel, crest of a mountain, point of deepest penetration into the coast, thalweg, to name but a few. Geographical features are not static, they change continually. To use general terms begs for trouble. Let me give two examples, one where states anticipated a change in environment; one where dispute arose from ambiguous language.

The 1970 Mexico-U.S. boundary, which went out only 12 nautical miles, begins at the center of the mouth of the Rio Grande. The two sides, recognizing the ambulatory nature of the river, sought to create a boundary with a reasonable degree of permanence. The initial point would be the center of the mouth, wherever it may be. The second point was fixed at a point 2,000 feet due east of where the center of the mouth was at the time the treaty was signed. Thus, the initial point may have meandered depending on how the river enters into the sea, but point two would remain stable as a hinge.

In the *Libya-Tunisia Continental Shelf* case, the judges determined the one boundary turning point by reference to the westernmost point of the Gulf of Gabes which penetrates into the Tunisia coastline and they gave it an approximate position. The two states have not yet reached an agreement to implement the decision due in part to Tunisia's challenge of the determination based on the Gulf of Gabes's geography. Tunisia argues more recent surveys indicate this westernmost point to be about five miles to the south of what the Court said the approximate coordinate should be. Should the Gulf of Gabes's westernmost point be moved five miles to the south, Tunisia would gain continental shelf.

NOTES AND REFERENCES

* The views expressed are those of the author and do not necessarily represent the views of the U.S. Government.

1. North Sea Continental Shelf, Judgment, 1969 *I.C.J. Rep.* 28 (para. 36).
2. *Arbitration between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf* para. 206 (Decision of June 30, 1977).
3. German Oral Argument, II *Pleadings* 29.
4. *Case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Memorial* 159 (graph at 161) (Decision of Sept. 27, 1982).
5. German Memorial, I *Pleadings* 73 (fig. 18).
6. Robinson, A. H. and R. D. Sales, *Elements of Cartography* 264 (3d ed.).

Argentina–Uruguay

Report Number 3–2

Agreement between the Government of Argentina and the Government of Uruguay Relating to the Delimitation of the River Plate and the Maritime Boundary between Argentina and Uruguay

Signed: 19 November 1973

Entered into force: 12 February 1974

Published at: UNTS No. 21424
Limits in the Seas No. 64 (1975)
Maritime Boundary Agreements (1970-84) 106 (1987)
13 ILM 251 (1974)
I Canadian Annex 273 (1983)
II Libyan Annex No. 32 (1983)
I Conforti & Francalanci 185 (1979)

I SUMMARY

In its 92 articles the Río de la Plata Treaty not only delimits both parties' jurisdiction within the river (taking into account within the river, *inter alia*, the navigation channels), but also establishes the maritime boundary between the parties, seaward of the closing line at the mouth of the river. No account is taken of navigation channels seaward of the closing line of the river.

The treaty provides, in its Article 10, that the lateral maritime boundary and the continental shelf boundary between Uruguay and Argentina is defined by an equidistant line, determined by the adjacent coasts, which begins at the midpoint of the straight baseline that joins Punta del Este (Uruguay) and Punta Rasa del Cabo San Antonio (Argentina).

The boundary is an all-purpose delimitation line, referring both to the maritime and the continental shelf boundary. It does not refer specifically to the exclusive economic zones of the parties.

The outer limit of the boundary line, seaward of the closing line is not indicated. This is perhaps because the continental shelf in this area has a natural

J.I. Charney and L.M. Alexander (eds), International Maritime Boundaries, 757–776.

prolongation beyond 200 nautical miles (m.m.), which would eventually be subject to the rules of delimitation with the area provided in Article 76, paras. 4, 5, and 6 and Annex II of the 1982 Law of the Sea Convention.

II CONSIDERATIONS

1 *Political, Strategic, and Historical Considerations*

In 1961 the two countries issued a joint declaration on the outer limit of the Río de la Plata, which states that the River Plate extends from the parallel of Punta Gorda to an imaginary straight line joining Punta del Este (Uruguay) and Punta Rasa del Cabo San Antonio (Argentina).

The maritime area seaward of the closing line of the river was delimited by means of an equidistant line, determined by the adjacent coasts method, beginning at the mid-point of that straight baseline.

It is understood that originally the Argentine authorities preferred to establish the delimitation by means of a parallel from the mid-point, as is done in the Pacific Ocean in other South American maritime delimitations. That method would have led to inequitable results for Uruguay, which had already agreed, in a joint declaration with Brazil, to follow the median line in its delimitation on the other maritime boundary to the north. In the joint declaration in 1969 both Uruguay and Brazil expressed their common view that the median line was the method adopted by international doctrines and practices, and in multilateral conventions, particularly Article 12 of the 1958 Geneva Convention on the Territorial Sea, thus suggesting that it should be followed in this delimitation.

2 *Legal Regime Considerations*

The consequence of the establishment of a closing line at the mouth of the Río de la Plata is that the waters behind that line are internal waters, within the exclusive jurisdiction of the parties. The closing line at the mouth of the river has been protested by several maritime powers, adducing its length of 118 n.m. and asserting that the applicable legal regime should be that of multinational bays or estuaries.

Argentina and Uruguay have answered these protests by asserting that, according to historical, geographical, and legal considerations, the Río de la Plata is a river: (1) it is not only called so but has also been treated as such since its discovery in 1515; (2) this character is confirmed by the nature of the enclosed water body, which is not salted as that of the sea; (3) the existence of deep currents; (4) its extremely shallow depths which make it navigable only by dredged channels; and, finally, (5) the existence of a series of sand banks between Punta del Este and Punta Rasa, constituting a typical bar at the mouth of the river. In answering the above-mentioned protests,

both states have confirmed their respect for the freedom of navigation in these waters, established under existing treaties and decrees.

Article 2 and following of the Río de la Plata Treaty determine the respective jurisdictions of the parties within the river, according to the nature of the activity to be exercised therein, or the geographical features of the course. A line of equidistance is fixed in certain sections.

The maritime delimitation only begins seaward of the closing line. Since the parties are recognized to have equal rights within the river, the maritime boundary had to start from the midpoint of the closing line. Despite an initial inclination in certain quarters in Argentina to follow from that midpoint the line of its parallel as in the Pacific, the parties finally agreed to adopt the line of equidistance determined by the adjacent coasts method. In so doing, they followed the same criterion which had been adopted by Brazil and Uruguay in a joint declaration issued in 1969.

Both Argentina, on 19 January 1967, and Uruguay, on 3 December 1969, claimed a 200-mile territorial sea, but freedom of navigation and overflight in that area is guaranteed by the treaty. Today, in the light of the developments in the Law of the Sea, the boundary line may be considered as an all-purpose delimitation line, dividing both the exclusive economic zone and the continental shelf of the parties.

The treaty contemplates the possibility of exploitation of a bed or deposit extending on either side of the line. In such a case, the bed or deposit shall be exploited in such a way that the distribution of the volume of the resource extracted from the bed or deposit must be proportional to the volume of the resource located on each side of the line.

The treaty also provides for a common fishing zone, seaward of 12 nautical miles, measured from the respective coastal baselines, for duly registered vessels of their flags. This zone is determined by two arcs of circles with radii of 200 n.m. whose center points are, respectively, Punta del Este (Uruguay) and Punta Rasa del Cabo San Antonio (Argentina). The whole area encompassed by these two arcs constitutes the common fishing zone.

The treaty provides that any dispute concerning its interpretation or application which cannot be resolved through direct negotiations may be submitted by either party to the International Court of Justice whenever said dispute could not be resolved by a conciliation procedure within a joint Comisión Administrativa del Río de la Plata.

3 *Economic and Environmental Considerations*

The common fishing zone established in Article 73 of the treaty, beyond the agreed boundary, is based on the fact that the main fishing species for commercial exploitation move towards the south, seeking cooler waters, in the summer months. The treaty provides that the volume of catch per species is to be determined equitably, in proportion to the ichtyological resources of each of the parties, evaluated on the basis of scientific and economic criteria.

With respect to pollution, the treaty establishes a zone in which the discharge of hydrocarbons resulting from the washing of tanks, the pumping of bilge, and ballasts is prohibited. On the accompanying map this zone is depicted by the lines connecting Punta del Este (Uruguay), and Punta Rasa del Cabo San Antonio (Argentina).

Economic and environmental considerations have not otherwise affected the location of the line or the regime established by the agreement.

4 *Geographical Considerations*

While within the Río de la Plata the coasts of the two parties bear an opposite relationship, beyond the closing line the coasts of the two parties assume an adjacent relationship, a fact acknowledged in the treaty (Article 70).

The equidistant boundary line was determined by the adjacent coast method including as basepoints Punta Médanos in Argentina and Isla de Lobos, off the coast of Uruguay.

5 *Islands, Rocks, Reefs, and Low-Tide Elevations Considerations*

Seaward of the closing line at the mouth of the river, the coasts of Argentina and Uruguay have similar configurations without any promontories that would substantially affect the delimitation. However, the Isla de Lobos in Uruguay has been attributed full effect as a basepoint for drawing the boundary and thus influences the line in favor of Argentina. This island, where marine seals gather, has permanent human installations to exploit this resource as well as a lighthouse.

6 *Baseline Considerations*

The whole maritime delimitation in this case is based on the establishment of a closing line as a baseline at the mouth of the Río de la Plata between Punta del Este (Uruguay) and Punta Rasa del Cabo San Antonio (Argentina). This is a mutually agreed baseline.

7 *Geological and Geomorphological Considerations*

Seaward of the closing line there extends a fairly broad area of shallow continental shelf in the physical sense. Depths of 200 meters (m) are reached some 110 n.m. out in the sea, at which point the seabed begins to deepen more rapidly. Depths of 3000 m are reached 170 n.m. seaward of the closing line. No deep troughs appear to exist, however, and the geomorphology generally parallels the coast. There are no unusual bathymetric features seaward of the closing line. The geological and geomorphological considerations have not affected the boundary line, but the natural prolongation of the shelf beyond

200 n.m. may explain why no outer limit has been indicated for the boundary line.

8 *Method of Delimitation Considerations*

The maritime boundary is defined as an equidistant line, determined by the adjacent coasts.

The configuration of Argentina's coast causes the true equidistant boundary to be diverted toward Uruguay since all points on both coasts are considered in drawing the equidistant boundary. Consequently, the line connects Point 23 to Points A, B, C, D, E, and F on the map. The boundary is not a perpendicular bisector of the river closing line, an alternative contemplated in LIMITS IN THE SEAS No. 64 and represented there by a dashed line.

On 15 July 1974 the parties exchanged maritime charts in which they agreed on the drawing of the lateral maritime boundary, the common fishing zone and the common area in which the discharge of hydrocarbons is forbidden.

As already indicated, the boundary, which is the true equidistant line, takes into account Punta Médanos in Argentina and the Isla de Lobos in Uruguay.

From Point A to Point E in the attached map the boundary is affected by Punta Médanos (Argentina) and the segment of the Argentina–Uruguay Río de la Plata closing line connecting Point 23 with Punta del Este (Uruguay). The line connecting Point A to Point E is in reality a segment of a parabolic curve. At Point E the Uruguayan island of Lobos influences the shelf boundary. The equidistant boundary continues seaward from Point E until it reaches Point F which is 200 n.m. from the island of Lobos and from Punta Médanos.

9 *Technical Considerations*

The delimitation of the maritime boundary between Argentina and Uruguay is plotted on the attached US Naval Oceanographic Chart No. 23030 and No. 24052. Since specific coordinates of the boundary are not cited in the treaty, the delimitation line on the attached map beyond Point 23 consists of provisional lines which were developed by the Department of State's Geographer on a US Chart.

10 *Other Considerations*

None.

IV RELATED LAW IN FORCE

A *Law of the Sea Conventions*

B *Maritime Jurisdiction Claimed at the Time of Signature*

Argentina: 200-mile territorial sea
Uruguay: 200-mile territorial sea

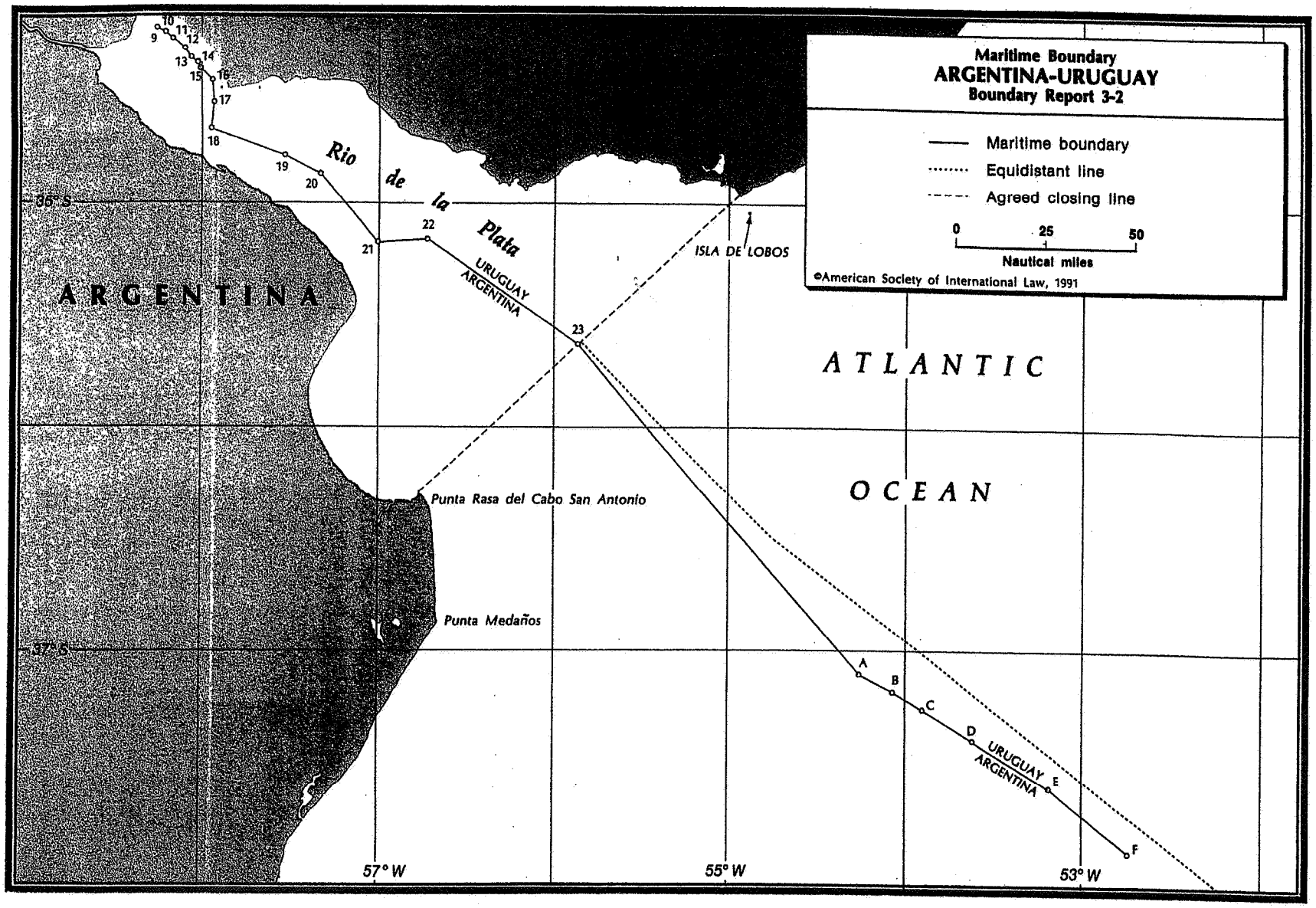
C *Maritime Jurisdiction Claimed Subsequent to Signature*

No change

V REFERENCES AND ADDITIONAL READINGS

US Department of State, LIMITS IN THE SEAS No. 64 (1975)

Prepared by Eduardo Jiménez de Aréchaga


Maritime Boundary
ARGENTINA-URUGUAY
Boundary Report 3-2
Maritime boundary
Equidistant line
Agreed closing line
0
25
50
Nautical miles
©American Society of International Law, 1991
Rio de la Plata
ARGENTINA
URUGUAY
ARGENTINA
ISLA DE LOBOS
ATLANTIC
OCEAN
Punta Rasa del Cabo San Antonio
Punta Medaños
35° S
37° S
57° W
55° W
53° W
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
A
B
C
D
E
F

Agreement Between the Government of Argentina and the Government of Uruguay Relating to the Delimitation of the River Plate and the Maritime Boundary Between Argentina and Uruguay

The Governments of the Oriental Republic of Uruguay and the Republic of Argentina, in the same spirit of cordiality and harmony reflected in the Ramirez-Saenz Pena Protocol of 1910 and reaffirmed in the Joint Declaration on the External Limit of the Río de la Plata [Plata River] of 1961 and the Protocol of the Río de la Plata of 1964, led by the common purpose of eliminating the difficulties that could emerge from lack of legal definition with respect to the exercise of their equal rights in the Río de la Plata and failure to determine the boundary between their respective maritime jurisdictions, and determined to lay the bases of a broader cooperation between the two countries and to strengthen the existing bonds of traditional friendship and deep affection that unite their people, have resolved to conclude a Treaty to solve those problems, taking into account the special features of the river and maritime territories involved and the technical requirements of their comprehensive utilization, and within the framework of respect for the sovereignty, rights, and interests of the two States.

PART I

RIO DE LA PLATA

CHAPTER I

JURISDICTION

Article 1

The Río de la Plata extends from the parallel of Punta Gorda to an imaginary straight line joining Punta del Este (Uruguay) and Punta Rasa del Cabo San Antonio (Argentina), in conformity with the provisions of the Treaty on the Limits of the Uruguay River of April 7, 1961 and the Joint Declaration on the Outer Limit of the Río de la Plata of January 30, 1961.

Article 2

A strip of exclusive jurisdiction adjacent to each Party's coast on the river is hereby established.

This coastal strip shall be seven nautical miles wide between the outer limit of the river and an imaginary straight line joining Colonia (Uruguay) and Punta Lara (Argentina) and two nautical miles wide from that line to the parallel of Punta Gorda. However, the outer limits of the strips shall be deflected as necessary in order that they will not overlap with the limits of channels located in waters of common use and so as to include port access channels.

Such limits shall not be less than 500 meters distant from the limits of channels located in waters of common use or more than 500 meters distant from the limits or mouths of port access channels.

Article 3

Outside the coastal strips, the jurisdiction of each Party shall apply to the Party's own flag vessels.

That jurisdiciton shall also apply to third-country flag vessels involved in accidents with vessels of that Party.

The provisions of the first and second paragraphs notwithstanding, the jurisdiction of a Party shall apply in all cases involving its security or when unlawful acts are committed that may have an effect in its territory, irrespective of the flag of the vessel involved.

If the security of both Parties is involved, or if the unlawful act has an effect in both territories, the jurisdiction of the Party whose coastal strip is nearest to the place where the vessel is apprehended shall prevail.

Article 10

The Parties may use, under equal conditions and in any circumstances, the channels located in the waters of common use.

Article 11

In the waters of common use, navigation by public and private vessels of the countries of the Río de la Plata basin and public and private third-flag merchant ships, shall be permitted without prejudice to rights previously granted the Parties under treaties in force. Moreover, each Party shall permit the passage of third-flag warships authorized by the other Party, provided such passage does not affect its order or security.

Article 41

Each party may explore and exploit the resources of the bed and subsoil of the river in the areas adjacent to their respective coasts up to a line determined by the following geographic points fixed on the charts made by the *Comisión Mixta Uruguayo–Argentina de Levantamiento Integral del Río de la Plata* [Uruguayan–Argentine Joint Commission for the Comprehensive Survey of the Plata River] and published by the *Servicio de Hidrografia Naval de la Republica Argentina* [Naval Hydrographic Service of the Argentine Republic], which are part of this Treaty:

Points	*South Latitude*	*West Longitude*
9	34° 12′ 0″	58° 15′ 1″
10	34° 13′ 3″	58° 12′ 5″
11	34° 15′ 2″	58° 10′ 0″
12	34° 17′ 7″	58° 05′ 5″
13	34° 20′ 0″	58° 03′ 9″
14	34° 21′ 7″	58° 01′ 2″
15	34° 22′ 8″	58° 00′ 6″
16	34° 26′ 6″	57° 56′ 4″
17	34° 33′ 0″	57° 56′ 1″
18	34° 40′ 0″	57° 57′ 1″

Chart H-117, Second Edition, 1973

Points	*South Latitude*	*West Longitude*
19	34° 47′ 0″	57° 32′ 0″
20	34° 52′ 0″	57° 20′ 0″
21	35° 11′ 0″	57° 00′ 0″

Chart H-113, First Edition, 1969

Points	*South Latitude*	*West Longitude*
22	35° 10′ 3″	56° 43′ 0″
23	35° 38′ 0″	55° 52′ 0″

Article 42

Installations or other works necessary for the exploration or exploitation of the resources of the riverbed and subsoil shall not interfere with navigation through passages or channels normally used in the river.

Article 43

Ore beds or deposits extending across the line established in Article 41 above shall be exploited in such a way that the distribution of the amounts of the resource extracted from them is proportional to the amount of that resource lying on each side of said line.

Each Party shall exploit beds or deposits of this type without causing material prejudice to the other Party, in accordance with the requirements to make comprehensive and rational use of the resource, and adhering to the criterion set forth in the first paragraph.

CHAPTER VIII

ISLANDS

Article 44

Existing islands or any island that may emerge in the river in the future shall belong to one of the two Parties depending on which side of the line indicated in Article 41 they are on, with the exception of what is provided for Martin Garcia Island in Article 45.

Article 45

Martin Garcia Island shall be devoted exclusively to a natural preserve for the conservation and preservation of the native fauna and flora, under the jurisdiction of the Argentine Republic, without prejudice to the provisions of Article 63.

Article 46

If the Martin Garcia Island merges with another island, its boundaries shall follow the contours of Martin Garcia Island as shown on chart H-118, to which Article 41 refers. Nevertheless, alluvial growths of Martin Garcia Island affecting its present natural access to the Martin Garcia (*Buenos Aires*) and El Infierno Channels shall belong to this island.

CHAPTER IX

POLLUTION

Article 47

For purposes of this Treaty pollution shall be understood to mean the direct or indirect introduction of harmful substances by man into the aquatic environment.

Article 48

Each Party agrees to protect and preserve the aquatic environment and, in particular, to prevent its pollution, establishing standards and adopting appropriate measures in conformity with applicable international agreements and in consonance, when applicable, with the guidelines and recommendations of international technical organizations.

Article 49

The Parties agree not to lower, in their respective laws:
(a) The technical standards in force for preventing water pollution; and
(b) The penalties established for violations.

Article 50

The Parties agree to inform each other of any water pollution standards they may plan to establish.

Article 51

Each Party shall be responsible to the other Party for damage sustained because of pollution caused by its own activities or by those of natural or juristic persons domiciled in its territory.

Article 52

The jurisdiction of each Party with respect to any infraction relating to pollution shall be exercised without prejudice to the rights of the other Party to receive compensation for the damage it, in turn, may have sustained as a consequence of the infraction.

To that end, the Parties shall cooperate with each other.

CHAPTER X

FISHERIES

Article 53

Each Party shall have the exclusive right to fish in its own coastal strip, as indicated in Article 2.

Outside the coastal strips, the Parties recognize the freedom of each other's vessels to fish in the river.

Article 54

The Parties shall agree upon standards to regulate fisheries in the river with respect to the conservation and preservation of living resources.

Article 55

When the intensity of fishing activities makes it necessary, the Parties shall agree upon the authorized maximum amounts of catch per species, as well as on necessary periodic adjustments. Such amounts of catch shall be distributed equally between the Parties.

Article 56

The Parties shall exchanged, on a regular basis, pertinent information concerning their fishing efforts and catch per species, as well as on the roster of vessels authorized to fish in the waters of common use.

CHAPTER XI

RESEARCH

Article 57

Each Party may conduct scientific studies or research throughout the river, provided that it gives prior notice to the other Party and informs it of the nature and the findings of such studies and research.

Each Party may, moreover, participate in all phases of any study or research undertaken by the other Party.

Article 58

The Parties shall promote the conduct of joint scientific studies of common interest, especially those relating to the comprehensive survey of the river.

CHAPTER XII

ADMINISTRATIVE COMMISSION

Article 59

The Parties shall appoint a joint commission which shall be called the Comision Administradora del Río del la Plata (Plata River Administrative Commission) and shall be composed of an equal number of members from each Party.

Article 66

The Administrative Commission shall have the following functions:

(a) To promote the conduct of joint scientific studies and research relating, in particular, to the evaluation, conservation, preservation, and rational use of living resources and the prevention and elimination of pollution and other harmful effects of the use, exploration, and exploitation of the waters of the river;
(b) To prescribe river fishery standards for the conservation and preservation of living resources;
(c) To coordinate pilotage regulations;
(d) To coordinate the adoption of common search and rescue plans, manuals, terminology, and systems of communication;
(e) To establish the procedure to follow and the information to provide in cases where units of one Party participating in search and rescue operations enter or leave the territory of the other Party;
(f) To prescribe the formalities that must be carried out for the temporary importation of search and rescue equipment into the territory of the other Party;
(g) To coordinate the aids to navigation and beacons;
(h) To establish lighterage zones in conformity with the provisions of Article 28;
(i) To transmit expeditiously to the Parties the communications, information, and notices originated by them in conformity with Part I of this Treaty.
(j) To perform the other functions assigned to it under this Treaty and such other functions as the Parties may agree to assign to it in its charter, through exchange of notes, or by means of other forms of agreement.

CHAPTER XIV

LATERAL MARITIME BOUNDARY

Article 70

The lateral maritime boundary and the continental shelf boundary between the Oriental Republic of Uruguay and the Argentine Republic are defined by an equidistant line, determined by the adjacent coasts methods, which begins at the midpoint of the baseline consisting of an imaginary straight line that joins Punta del Este (Uruguay) and Punta Rasa del Cabo San Antonio (Argentina).

Article 71

A bed or deposit extending on either side of the line established in Article 70 shall be exploited in such a way that the distribution of the volumes of resource extracted from the said bed or deposit is proportional to the volume of the resource located on each side of the said line.

Each Party shall carry out the exploitation of such beds or deposits without causing appreciable damage to the other Party and in accordance with the requirements of a comprehensive and rational utilization of the resource consistent with the criterion set forth in the first paragraph.

CHAPTER XV

NAVIGATION

Article 72

Both Parties guarantee the freedom of navigation and overflight of the seas under their respective jurisdictions seaward of 12 nautical miles measured from the corresponding baselines, and, in the mouth of the Río de la Plata [River Plata] beginning at its outer limit, without restrictions other than those deriving from the exercise by each party of its powers with regard to exploration, conservation, and exploitation of resources, protection and preservation of the environment, scientific research, and construction and emplacement of installations, and of those powers referred to in Article 86.

CHAPTER XVI

FISHING

Article 73

The Parties agree to establish a common fishing zone, seaward of 12 nautical miles measured from the respective coastal baselines, for the duly registered vessels of their flags. The aforesaid zone shall be determined by two arcs of circles with radii of 200 nautical miles whose center points are, respectively, Punta del Este (Uruguay) and Punta Rasa del Cabo San Antonio (Argentina).

Article 74

The volumes of catch, by species, shall be determined equitably, in proportion to the ichthyological resources of each of the Parties, evaluated on the basis of scientific and economic criteria.

The volume of catch that one of the Parties authorizes for third-flag vessels shall be counted as part of the share of that Party.

Article 75

The areas established in fishing licenses issued by the Argentine Republic and the Oriental Republic of Uruguay to third-flag vessels in their respective maritime jurisdictions may not exceed the line fixed in Article 70.

Article 76

The Parties shall exercise appropriate functions of control and supervision on both sides, respectively, of the line referred to in Article 75, and shall coordinate them adequately.

The Parties shall exchange lists of the vessels of their respective flags that operate in the common zone.

Article 77

Under no circumstances shall the provisions of this chapter be applicable to the capture of aquatic mammals.

CHAPTER XVII

POLLUTION

Article 78

The dumping of hydrocarbons resulting from the washing of tanks, the pumping of bilge and ballast, and, in general, any other action capable of causing pollution, is prohibited in the zone included within the following imaginary lines:

(a) Beginning at Punta del Este (Uruguay) and proceeding to
(b) A point at latitude 36° 14′ S., longitude 53° 32′ W.; from there to
(c) A point at latitude 37° 32′ S., longitude 55° 23′ W.; from there to
(d) Punta Rasa del Cabo San Antonio (Argentina); and, finally, from this point to the initial point at Punta del Este.

CHAPTER XVIII

RESEARCH

Article 79

Each Party shall authorize the other to carry out studies and research of an exclusively scientific nature in its respective maritime jurisdiction within the zone of common interest defined in Article 73, provided that sufficient prior notice is given indicating the characteristics of the study or research to be carried out and the areas and locations in which it will be done.

This authorization may be denied only in exceptional circumstances and for limited periods.

The authorizing Party shall have the right to participate in all phases of such studies and research and to know and have the use of the results.

CHAPTER XIV

MIXED TECHNICAL COMMISSION

Article 80

The Parties shall establish a Mixed Technical Commission, composed of an equal number of delegates for each party, charged with the conduct of research and the adoption and coordination of plans and measures relative to the conservation, preservation, and rational exploitation of living resources and to

the protection of the marine environment in the zone of common interest defined in Article 73.

Article 82

The Mixed Technical Commission shall perform the following functions:

(a) Fix the volumes of catch per species and allot them to the Parties, in accordance with the provisions of Article 74, as well as adjusting them periodically;
(b) Promote the joint conduct of scientific research, particularly within the zone of common interest, with special reference to the evaluation, conservation, and preservation of the living resources and their rational exploitation, and the prevention and elimination of pollution and other toxic effects that could result from the use, exploration, and exploitation of the marine environment;
(c) Make recommendations and submit plans tending to assure the maintenance of the value and equilibrium of the bio-ecological system;
(d) Establish standards and measures relative to the rational exploitation of the species in the zone of common interest, and the prevention and elimination of pollution;
(e) Prepare plans for the preservation, conservation, and development of the living resources in the zone of common interest, to be submitted for the consideration of the respective Governments;
(f) Promote studies and submit plans on the harmonization of the Parties' laws regarding matters for which the Commission is responsible;
(g) Transmit expeditiously to the Parties the communications, opinions, and information that the Parties exchange in accordance with the provisions of Part II of this treaty;
(h) Perform such other duties as the Parties may assign it in the Charter or through exchange of notes or other forms of agreement.

PART III

DEFENSE

CHAPTER XX

Article 85

Questions relating to the defense of the entire focal area of the Plata River shall be in the exclusive jurisdiction of the Parties.

CHAPTER XXIII

RATIFICATION AND ENTRY INTO FORCE

Article 92

This Treaty shall be ratified in accordance with the procedures set forth in the legal codes of the Parties and shall enter into force by means of an exchange of instruments of ratification to be effected in the City of Buenos Aires.

In witness whereof, the above-mentioned Plenipotentiaries signed and affixed their seals to two identical copies thereof at Montevideo on November 19, 1973.

MINISTRY OF FOREIGN AFFAIRS

Montevideo, November 19, 1973

Sir:

I have the honor of addressing Your Excellency in relation to the Treaty of the Río de la Plata and Its Maritime Limit, concluded today between our Governments.

In that connection, I concur with Your Excellency's statement that the 'port access channels' referred to in Article 2 of the above-mentioned treaty, are the following:

Uruguayan access channels to:

1. The port of Carmelo
2. The port of Conchillas
3. San Juan Bar
4. The port of Colonia
5. Puerto Sauce
6. The port of Montevideo
7. The port of Piriapolis
8. The bay of Maldonado

Argentine access channels to:

1. Parana de las Palmas River (Emilio Mitre Channel)
2. Lujan River (Coastal Channel)
3. The port of Buenos Aires
4. The port of La Plata

Similarly, with respect to the 'freedom of overflight' mentioned in Article

72, this should be understood with the limitations imposed upon it by the operative international conventions on the subject.

This note and that of Your Excellency of the same date and identical tenor, shall constitute an agreement between our two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

His Excellency
Alberto J. Vignes,
Minister of Foreign Affairs and Worship
of the Argentine Republic

Brazil–France (French Guiana)

Report Number 3–3

Agreement Between the Government of Brazil and the Government of France Relating to the Maritime Delimitation Between Brazil and French Guiana

Signed: 30 January 1981

Entered into force: 30 January 1981*

Published at: Maritime Boundary Agreements (1970–84)
87 (1987)
25 ILM 367 (1986)
I Canadian Annex 669 (1983)
II Conforti & Francalanci 205 (1987)

I SUMMARY

The treaty between France and Brazil, dated 30 January 1981, establishes the maritime limit between the adjacent coasts of French Guiana and Brazil by means of a line drawn from the midpoint of the closing line of the bay of Cyapock, a binational bay shared by Brazil and France. This line presents slight variations with respect to a line of strict equidistance, but it affects an exchange of areas of approximate equivalence.

This boundary is an all-purpose one, applying both to the sea area and the continental shelf, as made clear by the treaty which states that the maritime boundary includes the continental shelf.

The outer limit of the boundary is not specified but both parties have claimed a 200-nautical mile (n.m.) exclusive economic zone (France) or territorial sea including the sea floor and its subsoil (Brazil). Consequently, the maritime limit may be considered to reach to that distance. The coasts involved in this delimitation are adjacent.

* Article 3 of the agreement provides that the treaty will come into effect on the date of the signing of the documents.

J.I. Charney and L.M. Alexander (eds), International Maritime Boundaries, 777–783.

II CONSIDERATIONS

1 *Political, Strategic, and Historical Considerations*

The treaty provides that the starting position of the boundary is at the intersection of the boundary in the bay of Cyapock and the outer limit of the bay.

In the preamble of the treaty, it is stated that the parties concluded it in consideration of the Utrecht Treaty of 11 April 1713, the decision of the Court of Arbitration of the Swiss Federal Council of 1 December 1900, and pursuant to the application established by the Mixed Franco-Brazilian Commission on the delimitation of boundaries.[1]

2 *Legal Regime Considerations*

France, a party to the 1958 Convention on the Continental Shelf, claimed, on 12 February 1978, a 200-n.m. exclusive economic zone and Brazil claimed, on 25 March 1970, a 200-n.m. territorial sea which includes the floor of the sea and its subsoil.

The treaty is said to be based on the applicable rules and procedures of international law, and to take into consideration the work of the Third United Nations Conference on the Law of the Sea. Consequently, the boundary is a single line applying both to the continental shelf and the exclusive economic zone.

This agreement provides that all disagreements that could occur between the parties on the interpretation or application of the treaty will be resolved by peaceful means recognized by international law.

3 *Economic and Environmental Considerations*

Economic considerations, the exploitation of the resources of the area, or environmental concerns do not seem to have influenced the delimitation of the boundary line.

4 *Geographic Considerations*

The relationship of the coasts of the parties is one of adjacency.

The boundary is perpendicular to the general direction of the coasts of Brazil and French Guiana. It coincides roughly with the line of equidistance because of the straight baseline and the absence of promontories or other special circumstances on the coasts of either party that would markedly affect an equidistant line.

[1] The decision of the Court of Arbitration of the Swiss Federal Council of 1 December 1990 is published in LA FONTAINE, Pasicrisie Internationale, 564–578.

The relevant coasts in the delimitation area are roughly of the same length, so no question of proportionality seems to have arisen in this case.

5 *Islands, Rocks, Reefs, and Low-Tide Elevations Considerations*

The island of Le Grand Connétable, off the coast of French Guiana, influences the location of the equidistant line, but the parties decided not to take it fully into account in the first half of the boundary. However, the area thus lost by French Guiana was compensated by a projection of the second half of the boundary line towards the northeast.

No rocks, reefs, or other special geographical characteristics appear to exist in the boundary area that would call for special treatment or consideration.

6 *Baseline Considerations*

As already indicated, the starting position of the maritime limit was fixed at the intersection of the boundary in the bay of Cyapock and the outer limit of the bay. This signifies that a closing line of the bay was established as a baseline with the agreement of both parties.

7 *Geological and Geomorphological Considerations*

There do not appear to be any distinct seabed features that could have been used to affect the delimitation of the boundary.

8 *Method of Delimitation Considerations*

The method used was to define the boundary line by the loxodromic curve of the true azimuth. This line varies slightly from a line of strict equdistance, as may be seen in the attached map taken from the annexes to the Reply submitted by Canada in the Gulf of Maine case.[2] The attached map shows that the boundary to 200 n.m. produces an exchange of areas between the parties of approximate equivalence.

9 *Technical Considerations*

The maritime limit is defined by the loxodromic curve of the true azimuth 41° 30′, drawn from a point situated 04° 30′ 30″ N. lat. and 51° 38′ 12″ W. long. This azimuth and these coordinates are relative to the Brazilian geodetic system of reference, Datum Horizontal – Corrego Alegre. This geodetic system is the one on which the Brazilian nautical chart No. 110, first edition,

[2] I, CANADIAN ANNEX, Agreement No. 84.

27 April 1979, was based that was utilized during the Sixth Conference of the Franco-Brazilian Mixed Commission on the boundary delimitation.

10 *Other Considerations*

None.

IV RELATED LAW IN FORCE

A *Law of the Sea Conventions*

Brazil: Ratified the 1982 LOS Convention
France: Party to the 1958 Geneva Continental Shelf Convention

B *Maritime Jurisdiction Claimed at the Time of Signature*

Brazil: 200- mile territorial Sea
France: 12-mile territorial sea, 200-mile exclusive economic zone

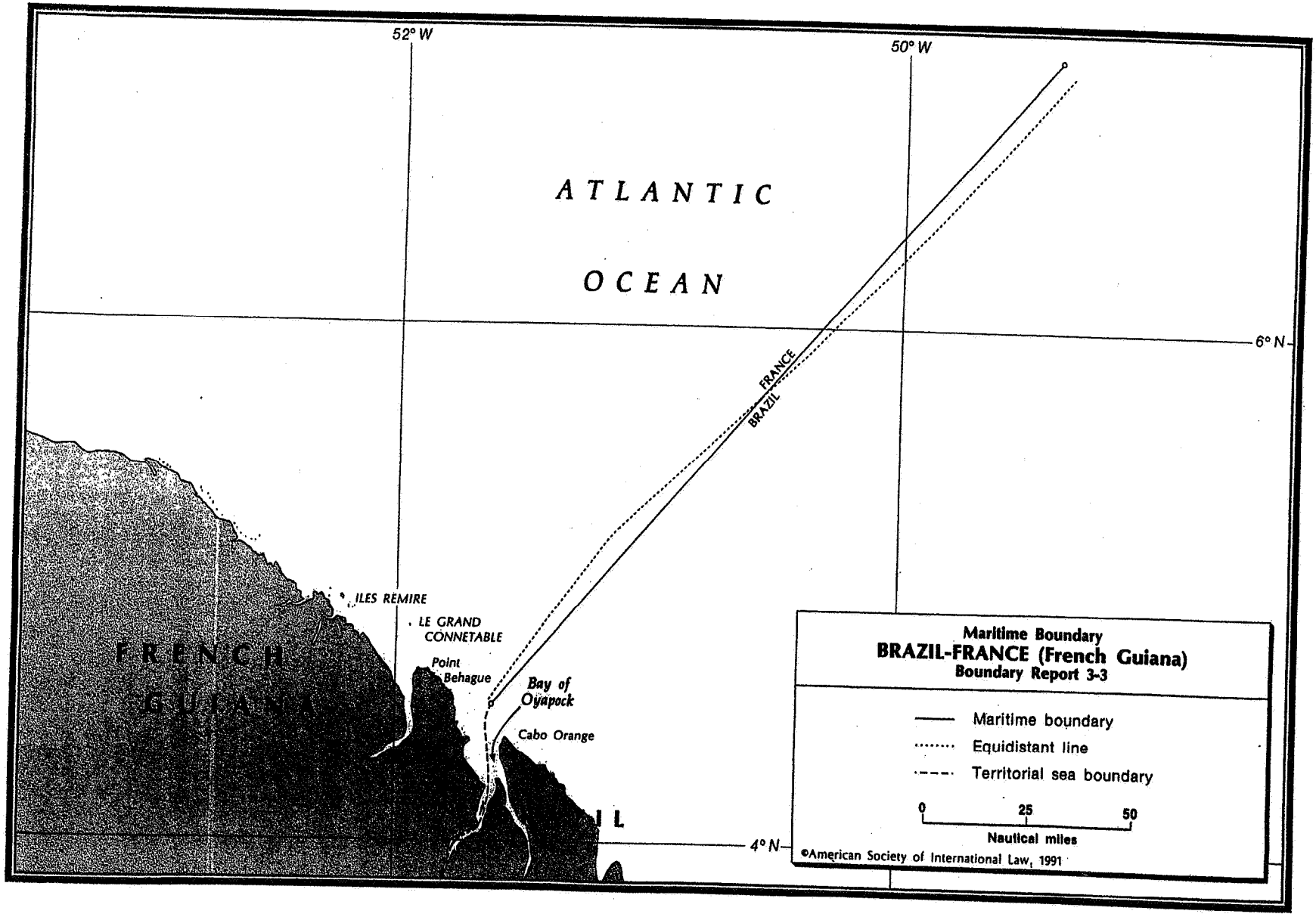
C *Maritime Jurisdiction Claimed Subsequent to Signature*

No change.

V REFERENCES AND ADDITIONAL READINGS

None.

Prepared by Eduardo Jiménez de Aréchaga


52° W
50° W
ATLANTIC
OCEAN
6° N
4° N
FRANCE
BRAZIL
ILES REMIRE
LE GRAND
CONNETABLE
Point
Behague
Bay of
Oyapock
Cabo Orange
FRENCH
GUIANA
Maritime Boundary
BRAZIL-FRANCE (French Guiana)
Boundary Report 3-3
Maritime boundary
Equidistant line
Territorial sea boundary
0
25
50
Nautical miles
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Agreement Between the Government of Brazil and the Government of France Relating to the Maritime Delimitation Between Brazil and French Guiana

His Excellency The President of The French Republic,
Mr. Valéry Giscard d'Estaing
His Excellency The President of The Federal Republic of Brazil,
Mr. João Baptista de Oliveira Figueiredo

Anxious to favour the widest possible development of friendly relations and good neighbourhood that exists between their countries,

Realizing the necessity to establish, positively, the maritime limits, including the continental shelf, between Guiana (French Republic) and the Federal Republic of Brazil,

Based on the rules and procedures of International Law, applicable on this matter, and taking into consideration the works of the 3rd United Nations Conference on the Law of the Sea,

In consideration of the Utrecht Treaty of the 11th of April 1713, the decision of the court of arbitration of the Swiss Federal Council of December 1st 1900 and pursuant to the application that has been established by the Mixed Commission Franco-Brazilian on the limitation of boundaries,

Following the negotiations that were held in Paris from 24 to 28 September 1979 and in Brasilia from 19 to 23 January 1981.

Have resolved to conclude the present treaty and have appointed,

THE PRESIDENT OF THE FRENCH REPUBLIC:
M. Jean-François Poncet, Minister of External Affairs

THE PRESIDENT OF THE FEDERAL REPUBLIC OF BRAZIL:
M. Ramiro Saraiva Guerreiro, Minister of State of External Relations who are in agreement with the following clauses:

Article 1

1 The maritime limit line, including the one of the continental shelf between Guiana (French Republic) and The Federal Republic of Brazil, is defined by the loxodromic curve of the true azimuth forty-one degrees, thirty minutes (41° 30′), from a position situated four degrees, thirty minutes, thirty seconds of latitude North (04° 30′ 30″ N) and fifty-one degrees, thirty-eight minutes, twelve seconds of longitude West (51° 38′ 12″ W). This azimuth and these coordinates are relative to the Brazilian geodetic system of reference "Datum Horizontal – Corrego Alegre".

2 This geodetic system is the one from which was established the Brazilian nautical chart number 110, first edition April 27, 1979, that has been utilized during the Sixth Conference of the Mixed Commission Franco-Brazilian for the boundaries delimitations.

3 The starting position defined in the present article is at the intersection of the boundary in the bay of Cyapock, boundary established during the Fifth Conference of the Mixed Commission, and the outer limit of the bay, established during the Sixth Conference of the Commission.

Article 2

All disagreement that could occur between the parties on the interpretation or application of the present treaty will be resolved by peaceful means recognized by the International Law.

Article 3

The present treaty will come into effect on the date of the signing of the documents.

IN WITNESS WHEREOF, the Undersigned have signed the present treaty and affixed their seal.

Dated and signed in Paris, 30 January 1981 in two original copies, French and Portuguese, both texts being official.

For the President of the
French Republic

For the President of the
Federal Republic of Brazil

Brazil–Uruguay

Report Number 3–4

Agreement between the Government of Brazil and the Government of Uruguay Relating to the Maritime Delimitation between Brazil and Uruguay

Signed: 21 July 1972; approved by Uruguayan legislature on 5 March 1974

Entered into force: 12 June 1975

Published at: 1120 UNTS 133 (1978)
Limits in the Seas No. 73 (1976)
Maritime Boundary Agreements (1970-84) 103 (1987)
I Canadian Annex 247 (1983)
II Libyan Annex No. 30 (1983)
II Conforti & Francalanci 209 (1987)

I SUMMARY

This agreement establishes a lateral maritime boundary between the two adjacent countries by means of a single line running nearly perpendicular to the general line of the coast. The length of the line is not specified, but may be calculated at 200 nautical miles (n.m.) (371 kilometers). This is based on the provision in the agreement stating that the line runs to the outer limit of the territorial seas claimed by the parties, which, at the time the agreement was signed, was 200 n.m. for both states. It is an all-purpose line applicable both to the territorial sea claimed by the parties and to their respective continental shelves.

In a joint declaration in 1969 both countries recognized as the lateral limit of their respective maritime jurisdictions the line equidistant from the nearest points of the coastlines of both states.

In implementing the declaration, the parties agreed on a line nearly perpendicular to the general direction of the coast. In the geographical context of the relevant area, this line achieved substantially the same result as a true or strict equidistant line.

J.I. Charney and L.M. Alexander (eds), International Maritime Boundaries, 785–792.

1 *Political, Strategic, and Historical Considerations*

On 10 May 1969, three years before the agreement was signed, Brazil and Uruguay issued a joint declaration stating that both countries recognized as the lateral limit of their respective maritime jurisdictions the line whose points are equidistant from the nearest points on the baseline.

This declaration in support of the method of equidistance invoked the precedents established by international doctrines, practice, and multilateral conventions, particularly Article 12 of the 1958 Geneva Convention on the Territorial Sea.

Neither of the states was a party to the 1958 Conventions. The reference to the Convention and to precedents established by international doctrines and practices may have been intended to express the strong view of both parties that in the pending delimitation between Argentina and Uruguay, the method of the parallel, adopted by the South American countries in the Pacific, should be discarded, since it would reduce inequitably the maritime area belonging to Uruguay.

2 *Legal Regime Considerations*

In the joint declaration, both governments decided to utilize a joint commission on the limits and the definition of the border, assisted by the hydrographic services of both countries, to take the necessary steps to define and identify the median line referred to in the declaration.

Since the joint declaration provided that the boundary had to start from the point where the two countries' common border reaches the Atlantic Ocean, the delimitation of the maritime boundary required the agreement of the parties on the exact location of that point. According to the land boundary treaties between both countries, dating from the middle of the 19th century, that point was the mouth of the Chuy Stream. But the mouth of this stream changes its location depending on the ocean tide and other geomorphological factors. It was first necessary to agree on the exact location of the mouth of the Chuy Stream whose bed had been recognized as unstable since the first Boundary Commission Report of 15 June 1853. On 12 October 1971, the Joint Boundary Commission fixed the location of the mouth of the Chuy Stream at the point defined by the intersection of the line running from the present Chuy lighthouse in a direction nearly perpendicular to the general line of the coast.

In determining the exact location of the boundary, the parties also agreed to follow the same bearing, that is to say a line nearly perpendicular to the general direction of the coast. Inasmuch as there are no distinct promontories on the coasts of either party that would markedly affect the equidistant line, the use of a perpendicular from the coast achieved substantially the same result. The map presented by Canada in an annex to its Reply on State

Practice,[1] shows the slight differences between the line that was agreed and a hypothetical equidistant line. In thus smoothing the line of equidistance, the parties agreed that a simplified and normal line was equitable to both sides.

The boundary is an all-purpose line applicable both to the territorial sea claimed by the parties and to their respective continental shelves. Both parties have proclaimed their sovereignty over the adjacent seas and the sea-floor and subsoil thereof (Brazil, Decree Law of 26 March 1970 and Uruguay, Decree of 3 December 1969 No. 604/969). Today, in the light of the developments in the Law of the Sea, the line may be considered as an all-purpose delimitation line, dividing both the exclusive economic zone and the continental shelf.

3 *Economic and Environmental Considerations*

In the preamble to the joint declaration of 10 May 1969, the parties emphasize the importance to the development of Brazil and Uruguay and to the welfare of their peoples of the protection of natural resources, particularly the living resources of the sea off the coasts of both countries. They expressed the desire to conform to the legal obligations defined in the Agreement on Fishing and Conservation of Living Resources which calls for cooperation between the two countries in this sector of their economies.

While these considerations determined the 200 n.m. claims of the parties, they did not affect the location of this maritime boundary.

4 *Geographic Considerations*

The establishment of the maritime boundary was facilitated by the geographical fact that the delimitation involved states with adjacent coasts which run in a fairly straight northeast–southwest direction in the vicinity of the land frontier. As already indicated, a prerequisite for the maritime delimitation was the agreed location of the point where the land boundary reaches the ocean.

5 *Islands, Rocks, Reefs, and Low-Tide Elevations Considerations*

There are no special or unusual geographical characteristics in the boundary area, such as islands, rocks, reefs, etc. that called for special treatment or consideration in determining the boundary.

6 *Baseline Considerations*

None of the parties had established in the boundary area straight baselines or closing lines of bays or rivers. The boundary was measured from normal

[1] I Canadian Annex, Agreement No. 35 at 248.

baselines. Point Palmar in Uruguay and a Brazilian mainland point northeast of Chuy Stream were the basepoints, located approximately 200 n.m. from the terminal boundary point.

7 *Geological and Geomorphological Considerations*

In the boundary area the seabed descends to depths of 3000 meters(m), but without any distinct features seaward of the land frontier. The bathymetric contours generally run parallel to the direction of the coast. The geomorphology of the seabed descends to a depth of over 3000 m, but there are no distinct troughs or other seabed features that had any effect on the boundary.

8 *Method of Delimitation Considerations*

The method used was to establish a rhumb line nearly perpendicular to the general direction of the coast. Commencing at the mouth of the Chuy Stream, the boundary extends seaward at a 128° azimuth (from true north). The relationship of the coasts of the shelf is one of adjacency. The coasts of the two states in the vicinity of the initial segment of the delimitation line are roughly equal in length so no question of proportionality arose.

9 *Technical Considerations*

The maritime lateral boundary between the two countries is defined by the rhumb line which, starting from the established point, runs on a bearing of 128 sexagesimal degrees (counting from true north) to the outside limit of the territorial sea of both countries. The extension of that rhumb line running inland passes by the Chuy lighthouse.

10 *Other Considerations*

None.

IV RELATED LAW IN FORCE

A *Law of the Sea Conventions*

Brazil: Ratified the 1982 LOS Convention

B *Maritime Jurisdiction Claimed at the Time of Signature*

Brazil: 200-mile territorial sea
Uruguay: 200-mile territorial sea

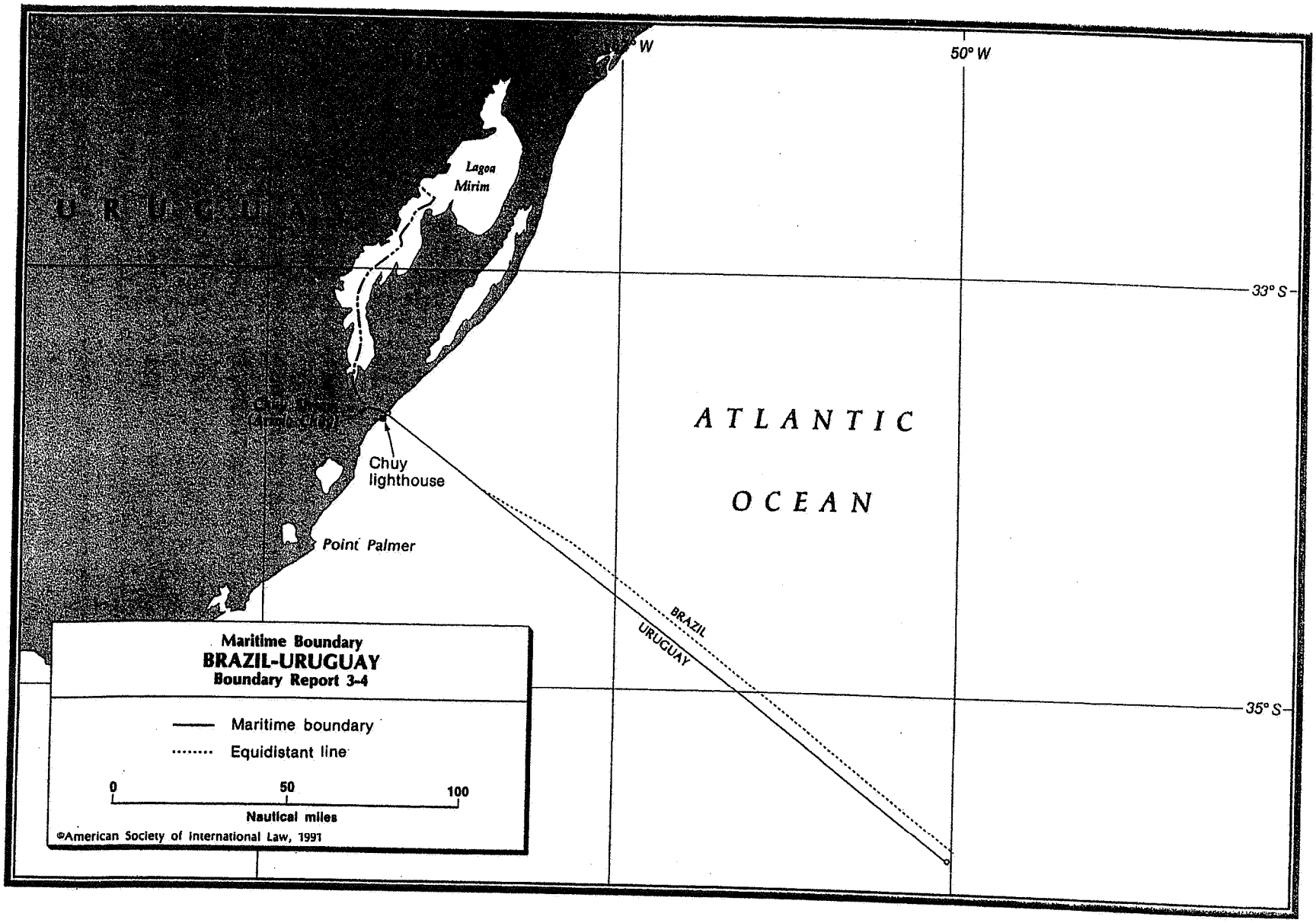
C *Maritime Jurisdiction Claimed Subsequent to Signature*

No change

V REFERENCES AND ADDITIONAL READINGS

I CANADIAN ANNEX 247 (1983)
LIBYAN ANNEX 30 (1983)
US Department of State, LIMITS IN THE SEAS No. 73 (1976)
Texts:
Notes of 21 July 1972, 12 June 1975
Declaration of 10 May 1969

Prepared by Eduardo Jiménez de Aréchaga


W
50° W
33° S
35° S
Lagoa Mirim
URUGUAY
ATLANTIC
OCEAN
Chuy lighthouse
Point Palmer
BRAZIL
URUGUAY
Maritime Boundary
BRAZIL-URUGUAY
Boundary Report 3-4
Maritime boundary
Equidistant line
0
50
100
Nautical miles
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Agreement between the Government of Brazil and the Government of Uruguay Relating to the Maritime Delimitation between Brazil and Uruguay

Notes of Ratification Exchanged between the Brazilian Embassy and the Uruguayan Minister of Foreign Affairs

With reference to the treaties and other instruments on this subject in force between Uruguay and Brazil – especially the Boundary Treaties of October 12, 1851, and May 15, 1852, and the related reports signed by the Boundary Commissioners, and, more recently, the Joint Declaration on Limits of Maritime Jurisdiction, signed by the Uruguayan and Brazilian Foreign Ministers on May 10, 1969, and the Joint Declaration of the Presidents of Uruguay and Brazil, signed on May 11, 1970 – the Uruguayan-Brazilian Joint Boundary Commission met in Rio de Janeiro, as Your Excellency is aware, for its 38th conference, with the intention of formally executing the above-mentioned Joint Declaration on Limits of Maritime Jurisdiction and Article 6 of the above-mentioned Declaration of the Presidents of Uruguay and Brazil.

Consequently, in the Report drawn up at the 38th conference, held on October 12, 1971, the Uruguayan-Brazilian Joint Boundary Commission established the mouth of Chuy Stream, whose bed has been recognized as unstable since the first Boundary Commission Report of June 15, 1853, as follows:

'The location of the mouth of Chuy Stream shall be fixed at the point defined by the intersection of the line running from the present Chuy light in a direction nearly perpendicular to the general line of the coast, on the same bearing as the maritime lateral boundary (specified below), with the Atlantic Ocean. The maritime lateral boundary between the two countries shall be defined by the rhumb line which, starting from the above-established point, shall run on a bearing of 128 sexagesimal degrees (counting from true north) to the outside limit of the territorial sea of both countries. The extension of that rhumb line running inland passes by the Chuy light. Both of the

Commission Heads also state that the principal marker No. 1 (reference marker), erected by the Joint Boundary Commission in 1853 near the left bank of Chuy Stream and on firm ground for better protection from the water, will be maintained in its original position, and that at the opportune time the necessary works to ensure that Chuy Stream will have its normal outlet at the above-established point will be undertaken.'

In view of the foregoing, I have the honor to inform Your Excellency that the Uruguayan Government agrees to adopt, jointly, with the Brazilian Government, the measures necessary to ensure the prompt execution of the works to fix the mouth of Chuy Stream permanently at the point established by both parties.

This note and Your Excellency's note of this same date and context shall constitute an agreement on this matter.

I avail myself of this opportunity to renew to Your Excellency the expressions of my highest consideration.

Further Exchange of Notes Concerning the Implementation of the Agreement, Dated 12 June 1975

I have the honor to inform Your Excellency that Uruguay [Brazil] has completed the domestic formalities for the approval of the text of the Agreement on the Final Establishment of the Chuy River Bank and the Lateral Sea Limit between the Oriental Republic of Uruguay and the Federal Republic of Brazil concluded at Montevideo by an exchange of notes dated July 21, 1972.

Consequently, I consider that this note and Your Excellency's note of similar content and date determine the entry into force today of the aforesaid Agreement on the Final Establishment of the Chuy River Bank and the Lateral Sea Limit between the Oriental Republic of Uruguay and the Federal Republic of Brazil.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

THE AMERICAN SOCIETY OF INTERNATIONAL LAW

International Maritime Boundaries

VOLUME I

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I

Political, Strategic, and Historical Considerations

BERNARD H. OXMAN

I INTRODUCTION

Why do states seek to agree on maritime boundaries? Three typical situations might be distinguished in this regard:

- substantial activities subject to coastal state jurisdiction are being conducted or are likely to be conducted in an area of actual or potential dispute;
- one or both states wish to stimulate uses, particularly fixed uses, of the area in question;
- there is no significant activity or interest in the area requiring a boundary.

A *Substantial Activities Being Conducted*

The first situation arises where substantial activities subject to coastal state jurisdiction are being conducted or are likely to be conducted in an area of actual or potential dispute. In this case, if either or both states attempt to enforce their jurisdiction, particularly against each other's nationals or licensees, there is a risk of serious escalation of the dispute. The consequences might include a decline in useful economic activity, inability to apply meaningful environmental or economic regulations, political animosity extending beyond those persons whose livelihoods are affected, private violence, or demands for escort with the attendant risk of direct confrontation between the armed forces of the two states.

The transfer of control over vast high seas fisheries to coastal states by virtue of extensions of fisheries jurisdiction to 200 nautical miles presents the typical case. Once jurisdiction is extended, both coastal and distant-water fishermen who visited the area yesterday (and perhaps many yesterdays) need to know where they may fish tomorrow. The basic choices governments have for avoiding confrontation arising from overlapping claims are explicit or tacit agreement on a permanent or interim boundary, explicit or tacit joint management within a defined area, explicit or tacit agreement on mutual restraint with respect to the exercise of jurisdiction over at least each other's nationals within a defined area, or unreciprocated unilateral restraint.[1]

[1] Absent express or tacit agreement on geographic limits roughly defining the disputed area,

J.I. Charney and L.M. Alexander (eds), International Maritime Boundaries, 3–40.

This probably explains the reasons for a significant number of delimitation agreements concluded after one or both states extended jurisdiction over fisheries to 200 miles, in most cases during or following the Third United Nations Conference on the Law of the Sea.[2] From this perspective, the delimitation agreement can be seen as a response to a need to agree on something and an inability or unwillingness to rely on restraint or tacit arrangements at least over the long term.

In almost all cases, the agreement also reflects a preference for a unilateral rather than joint management regime in principle, notwithstanding the practical need for joint arrangements to conserve and manage migrating fish stocks and transboundary ecosystems and the probable transboundary effort patterns of fishermen. The overwhelming majority of states has responded to the fisheries problem with defined geographic boundaries. No state appears to have entrusted a court or arbitral tribunal in a delimitation dispute with the authority to impose biologically and economically inspired fisheries management and allocation arrangements as part of a boundary regime in lieu of or in addition to a fixed boundary.

This suggests the continuing influence of the dominant political and legal approach to formal accommodation of states' competing claims to use and control on land: geographic partition with fixed, preferably precisely defined, geographic boundaries. To put it differently, while the extension of coastal state jurisdiction over fisheries places a mobile resource exploited by mobile vessels under the potential control of more than one state, the choice of a geographic boundary as the preferred formal means for accommodating and partitioning the respective interests, even where that boundary divides single stocks, ecosystems and effort patterns, may well reflect the dominance of political factors and legal habits over ostensibly dominant conservation and economic concerns.[3]

---

the 'defined area' for joint management or mutual restraint might encompass areas extending well beyond those likely to be in dispute, potentially embracing the full economic zones of both parties.

[2] For example, Mexico wished to settle its maritime boundary with Cuba prior to the effective date of its decree establishing an exclusive economic zone that extended its fisheries jurisdiction to 200 miles, (Cuba–Mexico (1976), No. 2–8). The relatively rapid agreement between the United States and Cuba may be due in part to the fact that a dispute over fisheries enforcement could have been quite nasty, particularly if it involved Cuban exiles residing in Florida (see Cuba–United States (1977), No. 1–4).

[3] The history of the Gulf of Maine adjudication is instructive. Two agreements were presented to the United States Senate. One submitted the question of a single maritime boundary to a Chamber of the International Court of Justice. The second dealt with fisheries, moderating the effect of an adjudicated boundary on the fishing interests of the parties. The Senate approved the first but not the second agreement. The first agreement was not amended to permit the Chamber to impose measures to moderate the effect of the boundary on fisheries interests, and the parties did not commit themselves to do so before the Chamber (although Canada described the general bilateral fisheries management relationship between the parties in glowing terms). It should surprise no one that the line drawn by the Chamber appears in effect to be sensitive to certain fisheries allocation problems.

Apologists for this system may argue that after, or at least in connection with, agreement on the boundary it becomes easier to address the problem of mutual cooperation in management in a formal manner. They might point to the Australia–Papua New Guinea agreement with respect to fisheries.[4] They might also point to the practice of arriving at unitization agreements where a fluid nonliving resource such as an oil or gas deposit is traversed by a political boundary or concession limit.

B *Desire to Stimulate Uses*

The second situation prompting a delimitation agreement arises where one or both states wish to stimulate uses, particularly fixed uses, of the area in question. The classic example would be exploration and exploitation of the continental shelf for oil and gas, preceded perhaps by prospecting or scientific research. The organization of the oil and gas industry generally assumes an exclusive legal right to extract the resources of an area with respect to which major site-specific investments are to be made.[5] A dispute between neighboring states over the area casts doubt on that right.

As compared with fishing, exploitation of seabed hydrocarbons is a relatively recent development. By the middle of the 20th century, virtually all of the world's seabed hydrocarbons were still unexplored and unexploited. There was plenty of room for the new industry outside boundary regions. The rapid emulation by other states of the Truman Proclamation's claim to the continental shelf [6] did not pose an immediate practical need for delimitation agreements in most areas. Not surprisingly, this need was first perceived in oil-rich shallow semi-enclosed seas such as the Persian Gulf.

While the lure of potential seabed riches has a significant political impact on governments, it would appear that potential boundary disputes with respect to the seabed are more manageable than fisheries disputes, and pose less of a political risk of escalation. Governments that wish to avoid provoking their neighbors may refrain from taking affirmative actions necessary to authorize oil and gas activities, or may make them subject to future boundary arrangements.[7] Legal uncertainty will itself have some restraining effect on the oil and

[4] Australia–Papua New Guinea (1978), No. 5–3.

[5] Indeed, it would seem that this need for exclusivity was a major driving force behind the formulation of the legal doctrine of the continental shelf.

[6] Presidential Proclamation No. 2667, 10 Fed. Reg. 12303 (1945), 4 Whiteman, DIGEST OF INTERNATIONAL LAW 756 (1965).

[7] In theory, the fact that the rights of the coastal state with respect to the continental shelf include commercial prospecting and scientific research should accelerate the pressure for reaching a boundary agreement. These activities, however, are conducted from ships over broad areas and generally do not require economic exclusivity. To some degree, satellite data obviates the need for on-site observation. Thus, either neglect or mutual restraint can postpone the pressure to agree on precise delimitation.

gas investor, typically a transnational company with substantial alternatives for investment.

Put simply, in the case of oil and gas, it will usually take some affirmative governmental action to trigger an escalation. In the case of fisheries, the fishermen may well force the issue. This is particularly so because those with the fewest alternative economic options are likely to be the coastal fishermen of the states concerned and the coastal communities they help support.

This is not to suggest that governments are unmoved by the risk of an escalating dispute in seeking to agree on seabed boundaries in areas of potential economic interest. The fear of an unfavorable *status quo* and the desire to achieve a favorable *status quo* are omnipresent in politics and diplomacy. Governments are under constant pressure to take potentially provocative actions designed to reinforce their claims. Lawyers trained in the influence of history and possession upon legal rights and in doctrines of estoppel may themselves add to this pressure. Taken together, the opinions of the Court in the *Eastern Greenland*,[8] *Temple of Preah Vihear*,[9] and *Tunisia–Libya Continental Shelf*[10] cases may have some unforeseen, arguably unjustified, but nevertheless unsettling effects in this regard.

The argument for a fixed boundary as opposed to a joint management arrangement may be stronger in the case of fixed uses such as oil and gas development than in the case of fisheries. The resource is not mobile. The exploitation activity is not mobile. Judge Jessup's observation in the *North Sea Continental Shelf* cases[11] that the real issue in continental shelf delimitation is allocation of valuable resource deposits seems not to have stimulated very much interest in joint management regimes. It is also not clear that the imposition of a direct joint management system on a disputed field or resource deposit is the best way to stimulate new investment or manage the resource. Some joint arrangements provide for geographic division of management authority between the states concerned.

The environmental effects of oil and gas development, however, are not necessarily localized. Pollution in a boundary region may affect several coastal states. While the United States made some arguments in this regard in support of its position concerning the location of the maritime boundary in the Gulf of Maine,[12] as in the case of fisheries there appears as yet to be no significant tendency to deviate for environmental reasons from the political tradition

[8] Legal Status of Eastern Greenland Case (Denmark/Norway), P.C.I.J., ser. A/B, No. 53 (1933), 3 Hudson, WORLD CT. REP. 148.

[9] Case Concerning the Temple of Preah Vihear (Cambodia/Thailand), 1962 I.C.J. REP. 6.

[10] Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), 1982 I.C.J. REP. 18.

[11] North Sea Continental Shelf cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), 1969 I.C.J. REP. 3, 67 (Sep. Op. Jessup, J.).

[12] Canada–United States (1979, judgment 1984), No. 1–3.

of a fixed boundary, except perhaps in the unusually sophisticated agreement between Australia and Papua New Guinea.[13]

C *No Significant Activity or Interest*

The third situation is perhaps the most intriguing. It arises when governments seek to agree on a maritime boundary despite the absence of significant activity or interest in the region requiring a boundary.

In this regard one might bear in mind that, with the notable exception of areas where the land boundary divides a navigable river at its mouth or an otherwise important navigation channel or route is involved, navigation and overflight are activities that do not normally require a precise determination of which state has jurisdiction in a particular area, especially when that area is beyond the territorial sea. Freedom of navigation and overflight beyond 12 miles from the coast is generally respected. Even within the territorial sea, ships of all states enjoy a right of innocent passage. Ships and aircraft are frequently able to avoid disputed boundary regions close to shore. It would appear that extended coastal state jurisdiction over pollution from ships at sea is too new (and the potential source of pollution too transitory) to generate much pressure for a maritime boundary for pollution regulation purposes.

If there is no significant activity requiring a boundary, why do governments negotiate boundaries in such circumstances?

A possible answer can be found in the desire to avoid potential disputes in the future where there are now none.[14] It is unclear whether this objective, in and of itself, often explains the behavior of governments. It is nevertheless likely to influence lawyers, and lawyers are likely to influence maritime boundary policy.

There may also be something special about boundaries that strengthens the desire to settle them even in the absence of a significant problem. Biologists might point out that some other mammals mark their territory, and that this marking has the effect of controlling disputes. Scope of jurisdiction lies at the heart of administrative law. Bureaucracies are preoccupied with jurisdictional limits. There is an almost palpable desire to demonstrate clearly (in this case, on a map) where power and responsibility do, and do not, exist.

Thus, it is not surprising to discover that some governments have embarked on a general program for the purpose of settling maritime boundaries in areas of extended maritime jurisdiction. Such a program is most evident in the case of states that must negotiate boundaries with a significant number of other states. Colombia, France, Indonesia, the United Kingdom, and the United States are among the examples.

[13] Australia–Papua New Guinea (1978), No. 5–3.

[14] Canada and Denmark are said to have been motivated by the desire to avoid future disputes in a largely unsettled area where Greenland faces the Canadian Arctic. (Canada–Denmark (Greenland) (1973), No. 1–1).

When one examines these examples, one is struck by the amount of activity related to islands and dependencies located at some considerable distance from the continental mainland or main islands. The United States has concluded a substantial number of maritime boundary agreements with respect to its islands in the Caribbean Sea and the Pacific Ocean, but has yet to agree on three of its four extended maritime boundaries with Canada or its boundary with the Bahamas. Colombia's boundary dispute with Venezuela remains unresolved.

The most obvious explanation is that it is easiest to reach agreement in the case of small islands surrounded by the deep waters of the Caribbean Sea or the Pacific Ocean where the boundary regions are unlikely to contain hydrocarbons or localized fisheries.[15] While the interest of small Pacific island states in regulating foreign tuna fleets may explain some of their interest in maritime boundaries, the highly migratory patterns of tuna greatly reduce the significance of the location of any particular boundary. There is little to inspire attempts to deviate significantly from equidistance in areas between small islands of comparable size where few if any resources are at stake.

There may however be other political factors at work. One possible implication of a maritime boundary agreement is recognition of the right of the state party to the agreement to conclude the agreement on behalf of the land territory from which the maritime jurisdiction extends.[16] The studies of Colombia's attempts to negotiate maritime boundaries in the Western Caribbean suggest a close link between these efforts and Colombia's dispute with Nicaragua over sovereignty with respect to the islands in question. One assumes Indonesia was not unaware of the political implications of a delimitation agreement with Australia dealing with the so-called Timor Gap in light of the controversy surrounding Indonesia's annexation of the former Portuguese colony.[17]

[15] Not much is known about commercial concentrations of high grade manganese modules in most places, not to mention subsurface hard mineral deposits. In the light of factors such as alternative sources of supply, market demand and cost of extraction, their present economic value, if any, is not regarded as great.

[16] Delimitation negotiations between Australia and the Solomon Islands began within three months of Solomon independence (Australia–Solomon Islands (1988), No. 5–4). The delimitation agreement between Bahrain and Iran was concluded shortly after Iran abandoned its claim to Bahrain (Bahrain–Iran (1971), No. 7–2). The boundary studies dealing with the Baltic Sea and the former German Democratic Republic suggest that the GDR may have seen maritime boundary agreements as reinforcing its position as a sovereign independent state in the light of the long period of non-recognition of the GDR by the Federal Republic of Germany and other Western states prior to the pursuit of the so-called Ostpolitik of the Federal Republic in the early 1970s. The delimitation agreement between the GDR and the FRG is considered a direct result of *détente* between the parties (Federal Republic of Germany–German Democratic Republic (1974), No. 10–5).

[17] These considerations apparently were not sufficient to persuade Indonesia to yield to Australia, in respect of Timor, as much as it had yielded geographically years earlier in respect of other areas, although it may explain Indonesian willingness to accept a joint management arrangement as the basis of the settlement on the Australian side of the Timor Trough

It is possible that extra-regional metropolitan powers are particularly interested in reinforcing the recognition of their territorial role in a region even in the absence of a specific territorial dispute,[18] bearing in mind that a potential boundary dispute in the future might be more difficult to resolve if the issue of the right to represent the territory in question were raised in that context. Conversely, a state may wish to provide a dependency with established maritime boundaries as a prelude to independence in order to protect the interests of the inhabitants and minimize foreign policy problems for the newly independent state.[19]

In a similar vein, one possible way to obtain or enhance recognition of baselines is to enter into a delimitation agreement based on equidistance in which the boundary is clearly measured from those baselines.[20] This factor might influence archipelagic states such as Indonesia.[21] Although the difference is not always easy to establish, this situation should be distinguished from one in which the primary purpose of the baselines is to influence the maritime boundary negotiations.

A related factor is the desire to 'consolidate' coastal state jurisdiction newly acquired under international law.[22] This appears to be particularly true in

(Australia–Indonesia (1989), No. 6–2(5)). On the other hand, Indonesia yielded even less in geographic terms in the provisional fisheries delimitation agreement in which Timor was not at least as prominent an issue (Australia–Indonesia (1981), No. 6–2(4)).

[18] It is curious that the text of the boundary agreement between France and Saint Lucia does not refer to Martinique, the French island concerned (France (Martinique)–Saint Lucia (1981), No. 2–10).

[19] For example, the United Kingdom sought to establish offshore boundaries among the Trucial States while it was still responsible for their foreign affairs. Sharjah and Umm al Qaywayn accepted (Sharjah–Umm al Qaywayn (1964), No. 7–10). See also boundary study No. 5–2, describing a 1958 United Kingdom line drawn with respect to North Borneo and Sarawak and Brunei. Australia, on behalf of Papua New Guinea, settled the land boundary and completed a missing segment of the maritime boundary with Indonesia in contemplation of the scheduled independence of Papua New Guinea in 1975 (Australia (Papua New Guinea)–Indonesia (1973), No. 6–2(3)).

[20] As a strictly legal matter, absent more specific references in the agreement, an equidistant line measured from a baseline does not necessarily imply recognition of the baseline as such, but merely acknowledgement that the claimed baseline represents an appropriate point of departure for applying equidistance principles (for example, a construction line representing the general direction of the coast). Of course, regardless of the effect of the claim on the boundary, a state may obtain recognition of its claim in connection with the boundary agreement. Panama obtained recognition of its claim that the Gulf of Panama is historic waters in its boundary agreements with Colombia and Costa Rica; only in the former case did the baseline affect the delimitation (Colombia–Panama (1976), No. 2–5; Costa Rica–Panama (1980), No. 2–6). There is speculation that North Korea may have obtained Soviet recognition of its unusually long 300-mile baseline in exchange for a maritime boundary favorable to the Soviet Union (North Korea–Soviet Union (1985), No. 5–15(1)).

[21] It is interesting that the maritime boundary between Indonesia and Singapore, which generally follows the deep draught tanker route, moves within the Indonesian archipelagic baselines at one point (Indonesia–Singapore (1973), No. 5–11).

[22] In some sense, it would appear to reflect a feeling that the existence of the close is

enclosed and semi-enclosed seas where the peaceful enjoyment of extended maritime jurisdiction is especially dependent upon arrangements with one's neighbors.[23] The series of British and other delimitation agreements in the North Sea followed immediately upon the entry into the force of the Continental Shelf Convention on 10 June 1964, designed in part to consolidate the conventional regime in the North Sea.[24] A similar process occurred in the Caribbean Sea with respect to the exclusive economic zone. A desire to consolidate 200-nautical-mile limits is identified as one reason for the delimitation agreement between Denmark and Norway.[25]

The decision to conclude a maritime boundary agreement may be influenced by political factors extraneous to the boundary itself. The objective need for agreement, particularly where relations are already strained, may become a convenient basis for governments to take tentative steps toward improving their relations. One notes, for example, that the United States negotiated a maritime boundary agreement with Cuba at a time when broader attempts were being made to improve bilateral relations.[26]

II POLITICAL FACTORS

A *Introduction*

Four important political decisions can be identified in connection with maritime boundaries: the decision to negotiate, the decision to propose a particular boundary,[27] the decision to make concessions with a view to reaching

tentative or inchoate until it is actually enclosed and precisely separated from the neighboring close. One way to identify a thing is to describe its perimeter (a circle for example). Perhaps looming in the background is Grotius' (in this context disconcerting) observation that because the vagrant waters of the sea cannot be enclosed they are necessarily free. The Third United Nations Conference on the Law of the Sea did not pursue a United States proposal to establish coastal state jurisdiction over fishing for stocks that reside in coastal areas beyond the territorial sea without fixing distance limits.

[23] It is interesting to note that many states, while implementing the continental shelf doctrine and delimiting their respective continental shelves in the area, have thus far refrained from implementing exclusive economic zones or 200-mile fisheries zones in the Mediterranean Sea, even when the same states have asserted such jurisdiction outside the Mediterranean Sea.

[24] This point is made in a number of North Sea boundary studies, especially Netherlands–United Kingdom (1965), No. 9–13. For the states concerned, the consolidation of the regime of the Continental Shelf Convention in the North Sea included not only the principles and rules of coastal state jurisdiction, but the delimitation rules set forth in Article 6. Convention on the Continental Shelf, 29 April 1958, 15 U.S.T 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311.

[25] Denmark (Faroe Islands)–Norway (1979), No. 9–1.

[26] Because of strained political relations between the parties, the US Senate has yet to approve the treaty. Provisional application has been renewed periodically by the parties (Cuba–United States (1977), No. 1–4).

[27] Some states have announced a public position related to the location of the boundary prior to negotiation, whether for tactical or political reasons or because of the need to define some (temporary) geographic limit on domestic regulatory or enforcement actions.

agreement,[28] and the decision to agree on a particular boundary. Even the decision to respect a tribunal's legally binding determination of a boundary is political.

The study of factors potentially influencing the location of maritime boundaries is a study of the influence of these different factors on the ultimate political decisions of governments. Unless it influences the decisions of those with political authority, any given factor is irrelevant to a particular boundary. The 'objective' importance of any given factor – assuming such a thing could be measured – does not necessarily explain its political impact.[29]

When a tribunal is asked to decide a dispute regarding a maritime boundary under international law, the tribunal will limit itself to examining factors it regards as legally relevant to the resolution of the issues in dispute. Much has been written about the rich and growing jurisprudence of the International Court of Justice and other tribunals in this connection. However flexible the articulated legal standards of 'equitable principles,' 'relevant circumstances,' and 'equitable result' may be, there can be no doubt that while the parties are free to take into account virtually anything they wish in fashioning their negotiating positions, a tribunal asked to apply international law is more limited.

The law of maritime delimitation may require the parties to negotiate in good faith. But it places few if any limitations on the location of an agreed boundary or related arrangements. Provided they agree, the parties are largely free to divide as they wish control over areas and activities subject to their jurisdiction under international law. They may be guided principally, in some measure, or not at all by legal principles and legally relevant factors a court might examine, and by a host of other factors a tribunal might well ignore such as relative power and wealth, the state of their relations, security and foreign policy objectives, convenience, and concessions unrelated to the boundary or even to maritime jurisdiction as such.[30]

[28] The temporal relationship among the first three decisions involves complex questions of subjective intent, information regarding the other side's attitudes, management of domestic political pressures, and negotiating strategy and style. Some seasoned negotiators would argue that, once sufficient information is available regarding the other party's interests, the best approach to reaching agreement is to collapse the second and third decisions into one 'reasonable' position around which one is prepared to negotiate at the margins but from which one is not prepared to retreat in principle. They would presumably regard as unfortunate the possible implication in the North Sea Continental Shelf cases that this approach might not satisfy the duty to negotiate in good faith. The Court noted that the parties 'are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it.' North Sea Continental Shelf case, *supra* note 11, para. 85.

[29] For example, the ocean policies of a major industrialized maritime state with global economic and strategic interests like the United States can be substantially influenced by local coastal fishing industries that represent a very small proportion of its economy.

[30] It is said that Italy settled for less than full effect for its islands in exchange for a wider

From this perspective, it is difficult and arguably misleading to isolate political from other factors when analyzing agreed boundaries. Yet it would make little sense even to attempt to replicate here what is so ably presented by other authors elsewhere in this study.

This being said, it should be noted that maritime boundary issues do not normally seem to engage the same level of political attention as many disputes over land territory. The resultant agreements are often viewed as economic or technical. Indeed, it can be argued that few maritime boundary agreements are regarded as overwhelmingly political, with the notable exception of the agreement between Argentina and Chile.[31]

In addition to the difficulty of isolating political considerations from other considerations affecting maritime boundaries, one must add the difficulty of accumulating relevant data on political factors. Virtually every boundary agreement is described, often in its preamble, as designed to foster good relations between the parties.[32] Yet governments may be reluctant to state publicly that for reasons of good relations they accepted a less favorable boundary than they might otherwise have obtained.[33] Governments could almost never be expected to assert that they received more because they had greater overall leverage in the bilateral relationship.[34]

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package on various political and economic questions, including Italian fishing in exchange for one billion lire per year (Italy–Tunisia (1971), No. 8–6).

[31] The agreement followed the Beagle Channel Arbitration, Argentina's rejection of the result, fears of armed conflict, and mediation by the Vatican. Its title is Treaty of Peace, Friendship and Maritime Delimitation. The treaty was submitted to a plebiscite in Argentina (Argentina–Chile (1984), No. 3–1).

[32] It might be noted that maritime boundary lines are frequently simplified by reducing the number of turning points, using a long line perpendicular to the general direction of the coast, or in other ways. The primary reason is to simplify compliance and enforcement. In order to avoid problems with inadvertent violations by fishermen, Chile, Ecuador, and Peru agreed to permit the neighboring state's nationals to fish in a 10-mile zone on either side of the maritime boundary beyond 12 miles from the coast (Chile–Peru (1952), No. 3–5; Ecuador–Peru (1952), No. 3–9).

[33] There are exceptions. The rapporteur of the France–Monaco treaty is quoted as stating to the French Senate, 'Because of the close and exceptional nature of French–Monégasque relations, France has accepted provisions that the rules of international law did not oblige it to accept.' The reference was to the Monégasque corridor leading out into the Mediterranean in a situation where equidistant lines would have cut off Monaco's maritime areas fairly close to shore (France–Monaco (1984), No. 8–3). Some readers of the opinions in the North Sea Continental Shelf cases, *supra* note 11, and the Guinea–Guinea-Bissau arbitration might question the statement. Award of 14 February 1985 of the Arbitration Tribunal for the Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau, 25 INT'L L. MAT. 252 (1986) (English translation of official French text). Senegal was no less generous to The Gambia (The Gambia–Senegal (1975), No. 4–2). Norway may have accepted a result that gave Iceland all of its 200-mile zone in part because Iceland is highly dependent on fishing (Iceland–Norway (Jan Mayen) (1980), No. 9–4).

[34] Two authors suggest that the relative strength of the parties was a factor in determining the location of the line. Its perception of Indian power may have influenced the Maldives government not to argue that Minicoy Island should be given reduced effect (India–Maldives (1976),

B *Related Accommodations*

A further analytical difficulty relates to the question of when a factor is deemed to have influenced the location of the boundary. The easy case is one in which the actual location of the boundary represents the accommodation of the interest concerned, for example where a boundary follows a navigation channel. A more difficult problem arises when the interest of a state is accommodated not by adjusting the position of the boundary, but by concurrent agreement that imposes an obligation on the other state with respect to areas on the latter's side of the boundary.

It seems reasonable to assume that in such cases the interest did indeed influence the location of the boundary in the sense that agreement might not have been reached on such a boundary absent the related accommodation. For example, a state concerned about navigation rights in a channel that is closer to its neighbor's coast than its own might prefer to use the channel as the boundary, but might in some circumstances settle for an equidistant line boundary in exchange for treaty guarantees of free navigation. That same state presumably would resist an equidistant line boundary absent related navigation guarantees.

The relationship between boundaries and related accommodations is sometimes overlooked in analyses of maritime boundary law because it does not form part of the formal jurisprudence. The reason for this is that the International Court of Justice and arbitral tribunals have not been asked by the parties to fashion a broader boundary region regime that accommodates their interests. Determining the location of a maritime boundary has generally been the sole means at the disposal of judges and arbitrators for accommodating relevant interest.[35]

C *Effect of Political Factors*

It is often difficult to discern what, if any, effect political considerations had on the location of an agreed maritime boundary.[36] A state's desire to maximize the areas subject to its jurisdiction and its interest in achieving agreement on

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No. 6–8). The delimitation line in the Bay of Biscay, more favorable to France than an equidistant line, was concluded at a time when Spain, under Franco, may have been in a somewhat weaker position diplomatically (France–Spain (1974), No. 9–2).

[35] The Iceland–Norway Conciliation Commission recommended a joint development zone with respect to the continental shelf. It should be noted that the Commission included prominent Icelandic and Norwegian diplomats and made a unanimous recommendation as requested. *See* Iceland–Norway (Jan Mayen) (1980/1981), No. 9–4; Evensen, *La Délimitation du Plateau Continental entre la Norvège et l'Islande dans le Secteur de Jan Mayen*, 27 ANN. FR. DR. INT. 711 (1981).

[36] Political factors may sometimes influence even technical questions, such as the issue of which chart to use to depict the agreed boundary. National prestige may account for the fact that both Italian and Yugoslav charts were used by the parties, giving rise to differences in numerical identification and location of points (Italy–Yugoslavia (1968), No. 8–7(1)).

a maritime boundary may well conflict. It stands to reason that if dispute avoidance is a primary purpose for seeking agreement, then a government is unlikely to maintain a position on the location of the boundary that itself stimulates a dispute. This proposition is, however, difficult to document from public sources.

Authors with knowledge of the factors influencing the US decision to give full effect to Aves Island in the delimitation agreement with Venezuela point out that 'as a political matter, there was little to gain and potentially much to lose in asserting a broader US boundary interest, particularly in light of the marginal resource interest in the area.' [37] One is struck by the comment that 'France was so accommodating as to allow Australia to use Middleton Reef, a low-tide elevation 125 n.m. offshore, as a basepoint' for determining the location of the equidistant line.[38] One of the reasons cited for Norwegian acceptance of a full 200-mile zone for Iceland was avoidance of a fishing dispute over capelin.[39] The boundary studies note Indonesia's generally accommodating attitude toward the location of its maritime boundaries with its neighbors.[40] It is not clear whether the fact that most of the joint development zone falls on the Japanese side of a hypothetical equidistant line with South Korea is related in some measure to historical problems in Japanese–Korean relations.

In those situations in which the desire for agreement outweighs actual or potential interest in areas that might be disputed, a state is likely to propose a boundary primarily with a view to facilitating negotiation. The proposal therefore is likely to be one that the negotiating partner would regard as acceptable, at least in principle.

In theory, all one need do is split the pie (that is the areas of overlapping jurisdiction) in half. In practice, geographic characteristics of the respective coasts and their geographic relationship to each other make delimitation a more difficult task even where states are not focusing on particular resources or areas.

The case of delimitation between relatively small islands usually presents the most notable exception. There an equidistant line will often halve the pie quite nicely. Thus it is not surprising that equidistant lines between islands have been used extensively in deeper parts of the Caribbean Sea and Pacific Ocean.

[37] Feldman and Colson, *The Maritime Boundaries of the United States*, 75 AM. J. INT'L L. 729, 747 (1981). One notes that the US did more than just avoid a fight; it negotiated a treaty giving Venezuela what it wanted, to the chagrin of some of Venezuela's other neighbors. Two additional factors are potentially relevant. First, the US had a general practice of giving full effect to islands in agreements applying equidistance. Second, Venezuela concluded its agreements with the US and The Netherlands at the same time.

[38] Australia–France (New Caledonia) (1982), No. 5–1.

[39] Iceland–Norway (Jan Mayen) (1980), No. 9–4.

[40] *See*, e.g., the discussion of political, strategic, and historical considerations in Australia–Indonesia (1971), No. 6–2(1).

A rarer exception arises where relatively regular coasts of adjacent states face in the same general direction. In that case, either an equidistant line or a line perpendicular to the general direction of the coast (in effect an equidistant line modified to ignore coastal irregularities) will also often halve the pie quite nicely. Given the great depths off the Pacific coast of South America, rendering disputes over specific resources in seaward regions less likely, and the political desire of the states concerned to maintain solidarity in support of their new and controversial claims of 200-mile zones, it is not surprising that this general type of approach was used by Chile, Ecuador and Peru in the 1952 Santiago Declaration, albeit in the somewhat unusual form of parallels of latitude that are not precisely perpendicular to the general direction of the coasts at the land frontiers.[41]

What this indicates is that equidistance or some simple equivalent is likely to be used where the desire to agree on both sides is stronger than the interest in maximizing claims, where specific resources or areas are not a major issue, and where the coastal characteristics are such that the resultant division of overlapping claims seems fair. In other situations, it cannot be asserted either that the use of equidistance necessarily reveals the existence of a dominant political interest in reaching agreement on the part of one or both parties or that the failure to use equidistance necessarily represents the absence of a dominant political interest in reaching agreement on the part of at least one of the parties. The reason is that in those situations, the question of fairness is more complex; equidistance may well represent a victory for one party and a defeat for the other.

D *Legal Factors*

Whatever its relative interest in achieving rapid agreement, a government must take into account the effect of any proposals it makes on its relations with its neighbors. Powerful states may be loath to appear like bullies. Strong and weak alike have an interest in credibility. Unless a state is prepared to expend unrelated resources (whether as carrots or sticks) to obtain a favorable maritime boundary, its proposal must be grounded in more than unrestrained self-interest. The search for a platform of principle will entail, at least in part, a search for a proposal that has a plausible legal and equitable foundation.

In this context, as in many others, governments can be expected to consult legal sources that are likely to be regarded as authoritative or at least persuasive by both parties. Thus, to some degree, maritime boundary agreements may be analyzed in terms of the chronology of major developments in the law of maritime delimitation as articulated by multilateral conferences and international tribunals.

[41] One is tempted to wonder whether the use of parallels of latitude may have been related to the fact that the jurisdiction asserted in the declaration extended 'not less than' 200 miles from the coast (Chile–Peru (1952), No. 3–5; Ecuador–Peru (1952), No. 3–9).

Following the entry into force of the Continental Shelf Convention,[42] the United Kingdom and other North Sea states set about implementing the Convention, including the delimitation rule in Article 6. A few years later, however, in direct response to this effort, the International Court of Justice in the *North Sea Continental Shelf* cases refused to apply Article 6 to a non-party, and enunciated a broader set of equitable principles, with substantial emphasis on the nature of the continental shelf as a natural prolongation of the land territory of the coastal state.[43]

The impact of the Court's dictum was unmistakable.[44] The United States for the first time made clear its view that the maritime boundary in the Gulf of Maine should place all of Georges Bank on the US side.[45] Australia was driven by the 'natural prolongation' language in the opinion to seek, and in large measure obtain, a continental shelf boundary extending to the deep trench off the Indonesian coast.[46] The summary report on North Europe notes that the 1969 opinion marks the turning point from equidistance to equitable principles in the region. As tribunals made clear in subsequent opinions, any legal presumption in favor of equidistance, if it ever existed, was gone.

The International Court of Justice subsequently retreated from natural prolongation in the *Tunisia–Libya* [47] case and especially the *Libya–Malta* case.[48] The provisional continental shelf agreement between Australia and Indonesia establishing a zone of cooperation in the so-called Timor Gap[49] as well as their provisional fisheries surveillance and enforcement arrangement[50]

[42] Convention on the Continental Shelf, *supra* note 24.

[43] North Sea Continental Shelf cases, *supra* note 11.

[44] Perhaps its most wide-ranging effect is the new alternative definition of the continental shelf in the UN Convention on the Law of the Sea as the natural prolongation of the land territory of a state extending to the outer edge of the continental margin. United Nations Convention on the Law of the Sea, 10 December 1982, Art. 76, UN Pub. Sales No. E.83.V.5 (1983), *reprinted in* 21 INT'L L. MAT. 1261 (1982).

[45] The position taken by the US in 1970 diplomatic discussions was that 'a boundary in accordance with equitable principles should follow the line of deepest water through the Northeast Channel, which would bring all of Georges Bank under US jurisdiction' (Feldman and Colson, *supra* note 37, 75 AM. J. INT'L L. 755 (1981)). For its part, Canada, which had consistently emphasized equidistance in the Gulf of Maine, later extended its claim to give reduced effect to Cape Cod and associated islands, relying on the opinion in the Anglo-French arbitration. It is possible this move was a largely tactical one related to the forthcoming litigation regarding the Gulf of Maine; it is also possible this move was not unrelated to the dispute regarding delimitation with respect to the French islands of St. Pierre and Miquelon off the Canadian coast.

[46] The analysis of the 1972 Australia–Indonesia seabed boundary agreement points out that not much was known about the resource potential of the seabed areas in question at the time (Australia–Indonesia (1972), No. 6–2(2)). The study does not advert to contemporaneous rumors that Indonesia reaped certain political benefits in connection with this agreement.

[47] Tunisia/Libya Continental Shelf case, *supra* note 10.

[48] Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta), 1985 I.C.J. REP. 13.

[49] Australia–Indonesia (1989), No. 6–2(5).

[50] Australia–Indonesia (1981), No. 6–2(4).

reveal a substantial retreat from the influence of geomorphology in their earlier continental shelf agreement.

The impact of the opinion in the *Guinea–Guinea-Bissau* arbitration is not limited to Africa. A specific reaction to that decision is noted in the study of the Colombia–Honduras delimitation.[51]

The foregoing are mere illustrations of the fact that while states are free to ignore their legal rights *inter se* in reaching agreement with each other, legal sources may well influence their claims and expectations, sometimes decisively.[52]

E *Effect on Third States*

A state faced with the negotiation of several maritime boundaries will need to consider the effect of its approach to one boundary on the others. Thus, for example, the United States has demonstrated a consistent practice of giving full effect to islands in agreements in which equidistance is used.

At the simplest level – influenced in part by debates of the issue during the Third UN Conference on the Law of the Sea – the text of delimitation agreements may expressly recite the reliance of the parties on equitable principles[53] or on equidistance.[54] Governments may regard such statements as a means of reinforcing their position of principle with respect to a third state; they may also be attempting to deal with arguable inconsistencies between the result they accepted in the agreement and the result they propose elsewhere.

In an effort to retain flexibility, some states will wish to avoid too precise or consistent an articulation of the underlying rules. Legal and advocacy considerations apart, it is not surprising that while Canada, in the Gulf of Maine

[51] Colombia–Honduras (1986), No. 2–4.

[52] One might compare the comments of knowledgeable American and British foreign ministry lawyers in this regard. The former state that US maritime boundary treaties 'are not agreements of maximum advantage for either side. Nor are they driven by particular theories of international law. They are negotiated agreements based on mutual interest and applying methodologies suitable to expressing that interest in the particular circumstance' (Feldman and Colson, *supra* note 37, 75 AM. J. INT'L L. 742 (1981)). The latter (Anderson) states that the Irish–United Kingdom agreement 'has been cited as a model for reaching pragmatic solutions to previously intractable boundary disputes. Geographical and legal factors played an important part in a successful effort to reach an equitable solution, acceptable to the respective governments and legislatures' (Ireland–United Kingdom (1988), No. 9–5).

[53] For example, the Dominican Republic–Venezuela agreement refers to equitable principles, arguably reflecting Venezuela's underlying position in other contexts. (Dominican Republic–Venezuela (1979), No. 2–9.) The Turkey–USSR agreement similarly refers to equitable principles, presumably reflecting the underlying position of both parties in other areas, including the Turkish position with respect to Greece in the Aegean (Turkey–Soviet Union (1978), No. 8–10 (2). Neither agreed line diverges substantially from equidistance.

[54] For example, the agreement between Greece and Italy refers to the 'principle of the median line' and 'mutually approved minor adjustments' thereto. Both parties may have had other delimitations in mind where they favor equidistance and full effect for islands. It is interesting that the agreement gives reduced effect to some islands (Greece–Italy (1977), No. 8–4).

dispute, was adhering fairly closely to an equidistance approach, it articulated the underlying rules in terms of equitable principles and relevant circumstances. At the time, other Canadian maritime boundaries remained to be determined. France and the United States have taken similar approaches in explaining the various equidistance boundaries they have negotiated.

Others may wish to use one or more agreements to influence an outstanding delimitation either directly or indirectly. The classic example of this approach is the equidistant line drawn by Denmark and The Netherlands as part of a more general implementation of the equidistance principle in Article 6 of the Convention on the Continental Shelf in the North Sea that included, in addition to these two states, Norway and the United Kingdom. It represented not only an attempt to reinforce the use of equidistance in the North Sea but, by extending the line to a point equidistant from their coasts and the German coast, an effort to apply equidistance directly to their respective boundaries with Germany. Similarly, the Denmark–UK and Netherlands–UK equidistant lines in practice met at a tri-junction point, a result inconsistent (except perhaps in mathematical theory) with Germany's view that its continental shelf extended to the middle of the North Sea.

The fact that this effort failed has not necessarily deterred others. In reaching their continental shelf delimitation agreement with each other, Ireland and the United Kingdom 'had common cause in opposing claims to part of the area by third States,' presumably Denmark and Iceland.[55] The equidistant line between Sicily and Tunisia was drawn as if Malta did not exist.[56]

Agreements delimiting areas claimed by third states are not, however, common. There is ample evidence of restraint. Numerous bilaterally drawn boundaries are terminated short of the tri-junction point with a third state even in the absence of any known dispute.[57]

In both the *Tunisia/Libya*[58] and *Libya/Malta*[59] cases, the Court took care to protect the interests of a concerned third state that, in each case, was unsuccessful in its efforts to intervene. In the first case, the Court did not specify the northeast terminus of the final segment of the boundary running in the direction of Malta. In the second case, the Court did not specify a boundary between the parties in areas claimed by Italy.

Efforts at indirectly influencing the boundaries with third states nevertheless persist:

- the boundary studies suggest that Venezuela embarked on a strategy of entering into delimitation agreements giving Aves Island full or substantial effect in hopes of influencing other governments to do the same, choosing to conclude the initial agreements with The Netherlands and the United States simultaneously,[60] and with France two years later;[61]
- Colombia appears to have attempted to structure its delimitation agreements with Costa Rica,[62] Honduras[63] and Panama[64] to be consistent with its position with regard to the use of the 82° W meridian under a 1930 exchange of notes in connection with its dispute with Nicaragua;
- Denmark and Sweden apparently felt that agreeing to give full effect to Bornholm in their agreement with each other would strengthen the Danish position vis-à-vis the GDR and Poland and the Swedish position in support of full effect for Gotland vis-à-vis Poland and the USSR;[65]
- in advance of reaching agreement on a precise boundary, Brazil and Uruguay issued a joint declaration supporting the use of equidistance. This may have been intended to counter an Argentine desire to duplicate the practice on the west coast of South America and use a parallel of latitude in its delimitation with Uruguay.[66]

The tribunal in the *Guinea–Guinea-Bissau* arbitration[67] devoted a great deal of attention to the problem of cut-off or enclavement, which occurs when a state's boundaries with neighboring (usually adjacent) states join at a point off its coast. This problem can be avoided if the boundaries on either side are coordinated so as to avoid a cut-off effect. The difficulty is that only the boundary between the parties to the arbitration is at issue. By emphasizing the need to avoid enclavement, determining the broad general direction of the coast with reference to the coasts of the immediate neighbors of both parties, and establishing the longest seaward segment of the boundary as a perpendicular to that general direction, the tribunal in effect was taking an

[55] Ireland–United Kingdom (1988), No. 9–5.

[56] Italy–Tunisia (1971), No. 8–6. The boundary terminates in the southeast at a point roughly equidistant between Malta and the Italian island of Lampedusa; the latter was accorded only a 13-mile zone as against Tunisia.

[57] An example is the Greece–Italy boundary, which stops short of the tri-junction points with Albania in the north and Libya in the south (Greece–Italy (1977), No. 8–4).

[58] Tunisia/Libya Continental Shelf case, *supra* note 10.

[59] Libya/Malta Continental Shelf case, *supra* note 48.

[60] The Netherlands (Antilles)–Venezuela (1978), No. 2–12; United States–Venezuela (1978), No. 2–14.

[61] France (Guadeloupe and Martinique)–Venezuela (1980), No. 2–11.

[62] Colombia–Costa Rica (1977), No. 2–1.

[63] Colombia–Honduras (1986), No. 2–4.

[64] Colombia–Panama (1976), No. 2–5. Colombia's recognition of Panama's historic claim to the Gulf of Panama was apparently phrased not only to protect its nonrecognition of Venezuela's claim in the Gulf of Venezuela but, according to the boundary study, to advance Colombia's position that Venezuela's claim must be recognized by Colombia in order to influence the delimitation.

[65] Franckx, *Baltic Sea Maritime Boundaries* and Denmark–Sweden (1984), No. 10–2. Neither party was completely successful.

[66] Brazil–Uruguay (1972), No. 3–4. Given the generally northeastward direction of the coast, the use of a parallel of latitude by Argentina and Uruguay would either have disadvantaged Brazil were such a parallel to be used between Brazil and Uruguay, or would have resulted in a substantial enclavement of the Uruguayan zone between the parallel to the south and an equidistant line with Brazil to the north.

[67] Guinea–Guinea-Bissau arbitration, *supra* note 33.

approach of broader utility in West Africa, and appears to have been aware of this.

F *Sovereignty Disputes*

In principle, all areas of land, including small islands and rocks above water at high tide, are entitled to some maritime jurisdiction.[68] If strict equidistance is the method of delimitation, they will have the same effect as promontories on much larger islands or longer continental coasts. Accordingly, the existence of a sovereignty dispute over insular or other coastal territory in an area requiring delimitation is likely to affect the delimitation agreement including, in many cases, the boundary itself.

If only one party to the negotiations is affected, the other may be reluctant to get involved. For example, the boundary drawn by Australia and France is terminated to the east at a point that avoids involving Australia in the territorial dispute between France and Vanuatu over certain islands controlled by France and also claimed by Vanuatu.[69] The same problem has apparently delayed Fiji's ratification of its delimitation agreement with France.[70] The terminus of the Atlantic maritime boundary between Trinidad and Tobago and Venezuela was shifted slightly to the north of a hypothetical tri-junction point with Guyana in order to avoid involving Trinidad and Tobago in any dispute between Guyana and Venezuela.[71]

If the sovereignty dispute is between the two states establishing the maritime boundary, they may use the same technique employed in the Australia–France agreement, namely terminating the boundary at a point where they agree that the disputed territory would not influence the location of the boundary. For example, this approach has been used with respect to disputed islands by Japan and South Korea[72] as well as France and Mauritius.[73] It was also used by Canada and the United States in the Gulf of Maine, where the landward terminus of the boundary the Chamber was asked to draw was located at sea in a manner designed to avoid the issue of sovereignty over Machias Seal Island and North Rock.[74] Italy and Yugoslavia's maritime boundary

[68] See Art. 121 of the UN Convention on the Law of the Sea, *supra* note 44. That article specifies by way of exception, 'Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.'

[69] Australia–France (1982), No. 5–1.

[70] France–Fiji (1983), No. 5–6.

[71] Trinidad and Tobago–Venezuela (1990), No. 2–13(3).

[72] Japan–South Korea (1974), No. 5–12.

[73] France (Reunion)–Mauritius (1980), No. 6–5.

[74] Canada–United States (1979, judgment 1984), No, 1–3. It might also be noted that Art. 298(1)(a)(i) of the UN Convention on the Law of the Sea, *supra* note 44, permits a party to exclude from arbitration, adjudication or conciliation a maritime boundary dispute 'that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory.'

originally stopped short of the Gulf of Trieste because the land border in the Trieste region was not settled.[75] It appears that the extensive delimitations agreed by the Irish Republic and the United Kingdom do not include delimitations measured from Northern Ireland.[76]

Another approach is to resolve the sovereignty dispute and the maritime boundary simultaneously. Perhaps the best known examples are the treaty between Italy and Yugoslavia settling both their land and territorial sea boundary in the Trieste region[77] and the Treaty of Peace, Friendship, and Maritime Delimitation between Argentina and Chile following the Beagle Channel arbitration, Argentina's rejection of the award, and mediation by the Vatican.[78] There are others.[79] In some cases, the maritime boundary is expressly identified as the line dividing sovereignty over islands as well;[80] there may even be specific reference to islands that may emerge in the future.[81] In some cases, the islands with respect to which sovereignty is resolved are given reduced effect in the maritime delimitation.[82]

[75] Italy–Yugoslavia (1968), No. 8–7(1).

[76] Ireland–United Kingdom (1988), No. 9–5.

[77] Italy–Yugoslavia (1975), No. 8–7(2).

[78] Argentina–Chile (1984), No. 3–1.

[79] The following are some examples. Because of its desire not to inhibit friendly relations, the United States abandoned its insular sovereignty claims in its delimitation agreements with the Cook Islands and with New Zealand with respect to Tokelau (Cook Islands–United States (1980), No. 5–5; New Zealand (Tokelau)–United States (1980), No. 5–14). In the preamble to the latter agreement New Zealand acknowledged that Swains Island is part of American Samoa. Bahrain and Saudi Arabia simultaneously divided disputed islands (Bahrain–Saudi Arabia (1958), No. 7–3). The Dubai–Sharjah arbitration simultaneously resolved the land and maritime boundaries (Dubai–Sharjah (1981), No. 7–4). The 1973 agreement between Australia and Indonesia settling the land boundary between Indonesia and Papua New Guinea (which Australia then represented) also settled a landward gap in the maritime boundary (Australia (Papua New Guinea)–Indonesia (1973), No. 6–2(3)). North Korea and the USSR simultaneously settled their boundary in the Tumen River and their territorial sea boundary (North Korea–Soviet Union (1985), No. 5–15(1)). Interestingly, Abu Dhabi and Dubai simultaneously moved their land frontier and their previously agreed maritime boundary 10 kilometers to the west (Abu Dhabi–Dubai (1968), No. 7–1).

[80] The following are some examples: The division of sovereignty over islands between Australia and Papua New Guinea under Art. 2 of the agreement is in part based on the seabed delimitation line (Australia–Papua New Guinea (1978), No. 5–3). The same approach was used by Abu Dhabi and Qatar (Qatar–United Arab Emirates (Abu Dhabi) (1969), No. 7–9).

[81] *See* Art. 5 of the Burma–India agreement (Burma–India (1986), No. 6–3).

[82] Burma abandoned its claim to Narcondam Island and India did not insist on the maximum possible claims from either Narcondam Island or Barren Island (Burma–India (1986), No. 6–3). In the agreement regarding Palk Strait and Bay, the island is not counted at all in the delimitation, and there is provision for access to the island for fishermen and pilgrims (India–Sri Lanka (1974), No. 6–10(1)). The Iran–Saudi Arabia agreement limits the effect of the islands to 12 miles (Iran–Saudi Arabia (1968), No. 7–7). It is not clear what influence a 1927 Icelandic letter reserving rights to the resources of Jan Mayen, prior to the formal Norwegian claim to Jan Mayen in 1929, had on the agreement to accord Iceland a full 200-mile exclusive economic zone in areas where the distance between the coasts is less than 400 miles, or on the Conciliation Commission's decision to establish a substantial joint management area with respect to seabed

III STRATEGIC FACTORS

A *Introduction*

While it is reasonably clear that at least some maritime boundaries were influenced by security interests, those interests are almost never adverted to in the text of the agreement and only rarely, and then often obliquely, in related commentary of governments. In this connection, it should be borne in mind that defense ministries are often consulted as governments develop their maritime boundary positions.[83] At times those ministries are represented on negotiating delegations. It seems reasonable to conclude that, whatever the apparent factors influencing its location, the acceptability of the boundary may well be reviewed from a security perspective.

A number of economic and other factors dealt with in other chapters of this study may engage the perceived security interests of a particular state. In a narrow sense, the term 'security' might refer to the right to conduct and, conversely, the right to restrict military activities at sea, principally by warships, coast guard vessels, and state aircraft. Yet even in that narrow sense, it is difficult to distinguish commercial navigation interests from security interests. Moreover, governments have asserted that the movement of international trade, and access to and control over mineral and hydrocarbon resources of the seabed, engage not only their economic but their security interests.[84] In the broadest sense, a state's efforts to accumulate friends and control the emergence or leverage of adversaries are fundamentally tied to its security.

B *Types of Security Concerns*

Two different aspects of security are potentially affected by maritime delimitation. One is the desire of a state to exclude or control activities of foreign states off its coast that it perceives to be prejudicial to its security.[85] The other is the desire of a state to be able to ensure that its own or foreign activities that are important to its security may be conducted without foreign interference, including protection of its access to the open sea and communications by sea and air with foreign states.

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resources, mostly on the Jan Mayen side of that 200-mile line (Iceland–Norway (Jan Mayen) (1980/1981), No. 9–4).

[83] In some cases, the navy is the primary internal source of charts, technical data, or maritime expertise.

[84] Soviet experts have spoken of environmental security, using the same Russian word that is used in 'Security Council' and 'Committee on State Security' (KGB). The cognates for 'security' in many Romance languages may share the arguably broader meaning of 'safety.'

[85] The political reality of this perception of security is to be distinguished from its substantive merits. Some might argue that, in certain situations, demagogy, paranoia, or xenophobia are better explanations for the perception.

Under the regimes set forth in the United Nations Convention on the Law of the Sea,[86] these interests are unquestionably affected in waters subject to the sovereignty of the coastal state, namely internal waters, archipelagic waters, and the territorial sea. That sovereignty is qualified by the right of innocent passage, which is subject to certain coastal state regulatory powers as well as the power to take measures to prevent passage that is not innocent and the power to suspend innocent passage outside straits. That sovereignty is also qualified by the right of ships and aircraft to transit passage of straits and archipelagic sea lanes passage.

As the tribunal in the *Guinea–Guinea-Bissau* arbitration observed,[87] the continental shelf and the exclusive economic zone are not zones of sovereignty, but rather areas in which the coastal state exercises more limited sovereign rights and jurisdiction for specific purposes. These are identified in detail in the United Nations Convention. In particular, freedom of navigation and overflight are expressly protected in the provisions dealing with the exclusive economic zone as well as the continental shelf. There are nevertheless aspects of these regimes that states may perceive as affecting their security interests:

- The United Nations Convention provides that artificial installations used for resource or other economic purposes are subject to coastal state control in the exclusive economic zone and on the continental shelf. The same is true of scientific installations as well as any other installations that may interfere with the exercise of the rights of the coastal state.[88]
- The coastal state largely has a free hand in determining where it will permit installations (and the safety zones around them) to be placed in its exclusive economic zone and on its continental shelf, subject to a somewhat narrowly phrased duty to avoid recognized sea lanes essential to international navigation,[89] supplemented in the UN Convention, by a general duty to avoid interference with navigation.[90] A neighboring state could be concerned about its access routes.
- The United Nations Convention accords the coastal state enforcement rights over foreign ships in its exclusive economic zone with respect to pollution in contravention of international standards or internationally approved

[86] UN Convention on the Law of the Sea, *supra* note 44.

[87] Guinea–Guinea-Bissau Award, *supra* note 33, para. 124.

[88] UN Convention on the Law of the Sea, *supra* note 44, Arts. 60, 80; see also *id.*, Art. 81. While Malta raised security concerns, the Court observed that neither party specifically raised the question of 'competence over the placing of military devices' in the Libya–Malta case (Libya/Malta Continental Shelf case, *supra* note 48, para. 51).

[89] UN Convention on the Law of the Sea, *supra* note 44, Art. 60, para. 7, repeating Art. 5, para. 6, of the Convention on the Continental Shelf, *supra* note 24.

[90] UN Convention on the Law of the Sea, *supra* note 44, Arts. 56(3), 58, 78(2), 87. While Art. 87 of the UN Convention includes among the express freedoms of the high seas the freedom to lay submarine cables and pipelines, this freedom is 'subject to Part VI' dealing with the continental shelf. Pursuant to Part VI, Art. 79, the coastal state duty not to impede the laying or

coastal state standards (and, in limited circumstances such as dumping or ice-covered areas, unilateral coastal state standards). The complex and carefully balanced provisions of the Convention on this matter are sometimes omitted from national laws on the exclusive economic zone that nevertheless contain a generalized assertion of jurisdiction with respect to control of pollution.

- The trend in the 20th century has been one of expanding coastal state jurisdiction in both a geographic and a functional sense. This trend may continue, either in terms of a gradual coastal shift in the balance between coastal and other interests in the exclusive economic zone or in some other way. Governments concerned with protecting their access to the sea may consider it prudent to deal with that contingency. In this connection it remains unclear whether the United Nations Convention on the Law of the Sea will eventually receive widespread adherence and, in any event, precisely how it will be interpreted and exactly how much of a restraining influence it will be.

C *Exclusionary Interest*

There is very little evidence of boundaries being drawn to reflect a security interest of the coastal state in excluding or controlling foreign activities off its coast.[91] That security interest is sometimes perceived in terms of proximity to the coast.[92] An equidistant line, usually regarded as based exclusively on geographic factors, or some other line reasonably far from the coast might accordingly commend itself to some parties as an appropriate accommodation of their respective coastal security interests. Since the security factor is masked, it is difficult to tell whether it actually influenced the behavior of governments.

In the *Libya–Malta* case, the Court noted that the delimitation resulting from its judgment is 'not so near to the coasts of either Party as to make

maintenance of cables and pipelines is subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction, and control of pollution from pipelines. Moreover, the delineation of the course for the laying of pipelines on the continental shelf is subject to the consent of the coastal State.

[91] It is said that strategic considerations influenced the strong position taken by Sweden in favor of full effect for Gotland in its negotiations with the USSR. Sweden eventually settled for 75 percent effect (Sweden–USSR (1988), No. 10–9). It is possible that traditional Soviet sensitivity concerning the security of the Arctic coast, at times associated with the so-called sector principle, was a factor that encouraged the Soviet Union to regard the line set forth in the 1867 US–Russia Convention ceding Alaska as the maritime boundary; north of the Bering Strait, the line follows a meridian of longitude due north into the Arctic Ocean. *See* United States–USSR (1990), No. 1–6.

[92] Malta associated security interests with proximity to the coast in its arguments before the International Court of Justice regarding the delimitation of its continental shelf with Libya (Libya–Malta case, *supra* note 48). Guinea-Bissau did much the same in its arbitration with Guinea (Guinea–Guinea-Bissau arbitration, *supra* note 33). The Truman Proclamation on the Continental Shelf, *supra* note 6, might suggest an analogous view of security (however unlikely the provenance of that limited vision from the world's dominant maritime power might appear

questions of security a particular consideration in the present case.' [93] The tribunal in the *Guinea–Guinea-Bissau* arbitration made a similar point, noting that security implications are avoided under its proposed solution by the fact that each state controls the maritime territories opposite its coasts and in their vicinity.[94] It may well be that governments, like these two tribunals, are more likely to test particular proposed results against this security concern than to shape a proposal specifically in response to this concern.

It is also sometimes difficult to tell whether a boundary drawn to maximize access to and from a naval base, for example, is not – at least in the territorial sea – also designed to maximize that state's control over foreign activities near the base. It is reported that Soviet strategic interests with respect to the main Pacific fleet naval base at Vladivostok produced a territorial sea boundary more favorable to the USSR than a hypothetical equidistant line.[95] There can be no doubt that access to and from the base was a primary strategic concern. It is not clear that this was the only strategic concern.

D *Access to and from the Open Sea*

There is ample evidence that concerns about access to and from the sea have influenced maritime boundaries either directly by altering or confirming their location or indirectly by prompting simultaneous agreement on substantive provisions protecting navigation rights. These factors are examined in detail in Dr Kwiatkowska's chapter on Economic and Environmental Considerations. The summary report with respect to the Baltic Sea notes that only navigation interests were strong enough to prevail over the general use of equidistance in that region.

It is often difficult to tell whether a state's preoccupation with navigation derives primarily from economic or security concerns. In this connection, it must be borne in mind that security concerns regarding access relate not only to the naval and air forces of the particular coastal state, but to access for the forces of friendly states and, beyond that, to the protection of trading and communications routes fundamental to the economy of the state.

One would expect most explicit concerns with naval access to be manifested by major naval powers. It is nevertheless interesting that Soviet boundaries figure prominently in the references in the boundary studies to maritime boundaries configured in response to concerns about naval access.[96]

to some observers). The preamble includes, as the final item in the list of justifications for the assertion of jurisdiction over the resources of the continental shelf, the statement, 'since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources'.

[93] Libya/Malta Continental Shelf case, *supra* note 48, para. 51.

[94] Guinea–Guinea-Bissau award, *supra* note 33, para. 124 (*see* Guinea–Guinea-Bissau (1985), No. 4–3).

[95] North Korea–Soviet Union (1985), No. 5–15(1).

[96] North Korea–Soviet Union (1985), No. 5–15(1), discussed above; Norway–USSR (1957),

This may reflect the circumstances of Soviet geography, the historic Russian and Soviet preoccupation with access to the sea, greater emphasis on security concerns in Soviet policy-making, or a tendency by outside observers to emphasize security factors in their analyses of Soviet motives.

The Soviet Union is not, however, alone. While it is common in connection with base rights agreements to provide for rights of access through the waters and air space of the host state, the Cyprus–United Kingdom agreement went further. It established lines extending seaward from the UK bases between which Cyprus may not claim territorial waters.[97] The United States' desire to protect transit routes to and from San Diego, where it has a major naval base, is cited as a factor supporting the decision to give full effect to islands in a delimitation based on equidistance.[98] France made strategic arguments, particularly regarding access to the port of Cherbourg, in the *Anglo–French* arbitration. In effect, the tribunal gave priority to French interests in navigation and security between the eastern and western parts of the English Channel.[99]

States may desire to ensure that specific navigation routes are within their own waters, or at least outside the waters of the neighboring state. The Soviet, UK, US, and French examples already cited are generally of this type. There are, however, others.

The practice of dividing the deep channel continues to be used close to shore. This may be done when the channel extends seaward from a land boundary in a river: the inner part of the line used in the *Guinea–Guinea-Bissau* arbitration follows an 'historic' boundary using the thalweg.[100] It may also be done when the channel lies between the opposite coasts of the parties: the Indonesia–Singapore boundary generally follows the deep draught tanker route, even extending within the Indonesian archipelagic baselines at one

No. 9–6, in the 'strategically and politically sensitive' area of the Varangerfjord, where the 'boundary runs, broadly speaking, across the broad mouth of the Gulf leaving plenty of water on either side for access from the fjord to the Barents Sea'; Finland–USSR (1940, 1947), No. 10–4(1), where the territorial sea boundary in the Gulf of Finland established by the 1940 and 1947 peace treaties between the parties was heavily influenced by Soviet security concerns, and where Gogland (Suursaari) Island was given only limited effect to safeguard free navigation north of it. The elaborate provisions in the Turkey–Soviet Union territorial sea agreement for range markers and for situations where the markers are seen as overlapping (possibly causing a vessel to cross the line inadvertently) presumably reflect an underlying concern about protecting navigation in an area of zealous coastal security enforcement (Turkey–USSR (1973), No.; 8–10(1)).

[97] Cyprus–United Kingdom (Akrotiri, Dhekelia) (1960), No. 8–1.

[98] Mexico–United States (1976, 1978), No. 1–5.

[99] France–United Kingdom (arbitral award) (1982), No. 9–3. While navigation factors apparently did not affect the negotiated boundary as such, in general the east–west lane of the traffic separation scheme is on the UK side while the west–east lane is on the French side (France–United Kingdom (1982, 1988), No. 9–3).

[100] Guinea–Guinea-Bissau award, *supra* note 33, paras. 45, 111. *See* Guinea–Guinea-Bissau (1985), No. 4–3.

point.[101] In other cases, the channel may be of principal concern to one state. The boundary between the Federal Republic of Germany and the former German Democratic Republic in Lübeck Bay located the entire shipping route to the FRG ports on the FRG side.[102]

On occasion, a state may limit its objectives to ensuring that a navigation route or other areas, although not within its own waters, are outside the waters, or at least the territorial sea, of the neighboring state.[103] The Argentina–Chile treaty limits the territorial sea, as between the parties, to three miles in some areas.[104] The Australia–Papua New Guinea treaty limits the territorial sea of certain islands to three miles, and in other respects limits the territorial seas and archipelagic waters of the parties.[105] The agreement between Poland and the former German Democratic Republic is specifically designed to protect the northern access route to Polish ports, in part by limiting the territorial sea and other jurisdiction of the GDR.[106]

Two interesting agreements specifically limit certain types of coastal state jurisdiction in the exclusive economic zone and on the continental shelf. The Netherlands–Venezuela agreement places limits on the exercise of jurisdiction to prevent pollution from ships and requires mutual agreement for emplacing structures that may obstruct recognized sea lanes.[107] The Australia–Papua New Guinea agreement defines an area within the central Torres Strait, where the fisheries and seabed delimitation lines diverge, in which the exercise of 'residual jurisdiction' requires the concurrence of the other party. 'Residual jurisdiction' is defined as jurisdiction other than seabed and fisheries jurisdiction as well as seabed and fisheries jurisdiction not directly related to the exploration or exploitation of resources.[108]

A number of agreements are structured so that each party's vessels can travel to and from its ports on its own side of the boundary. In many situations this objective can be achieved by any of several plausible maritime boundaries, and thus may not be evident in the specific location or discussion of the boundary.

With respect to the France–Italy delimitation in the Straits of Bonifacio, it

[101] Indonesia–Singapore (1973), No. 5–11.

[102] Federal Republic of Germany–German Democratic Republic (1974), No. 10–5. The boundary study notes that the FRG may also have considered its submarine testing areas near Neustadt in connection with this boundary.

[103] The Cyprus–UK agreement discussed above is an example (Cyprus–United Kingdom (Akrotiri, Dhekelia) (1960), No. 8–1).

[104] Argentina–Chile (1984), No. 3–1.

[105] Australia–Papua New Guinea (1978), No. 5–3.

[106] German Democratic Republic–Poland (1989), No. 10–6(1). This agreement discards a continental shelf boundary negotiated in 1968. In the interim, a dispute over navigation erupted between the parties that was extensively debated in the Polish parliament. *See* Federal Republic of Germany–Poland (1990), No. 10–6(2).

[107] The Netherlands (Antilles)–Venezuela (1978), No. 2–12.

[108] Australia–Papua New Guinea (1978), No. 5–3.

is suggested that the 'desire of both parties to reach a delimitation which would permit passage through the Mouths without entering the territorial sea of the other party might have influenced the negotiations.' [109] A similar consideration is said to have influenced the Italy–Yugolavia territorial sea boundary in the Gulf of Trieste; in this connection, the Italian Foreign Minister referred to the navigation of large tonnage ships without the necessity of passing through Yugoslav waters.[110] Navigation interests prevailed over effect for the island of Ven in the 1932 territorial sea delimitation in the Sound between Denmark and Sweden.[111]

E *Enclavement*

A particular problem is posed by the so-called cut-off or enclavement effect that can arise when the maritime boundaries between a state and its neighbors meet at a point off its coast. In the case of enclosed and semi-enclosed seas, some cut-off effects are unavoidable. Despite this fact, extension of a state's jurisdiction so as to avoid enclavement by its boundaries with some states (e.g., adjacent states) can minimize the number of states whose zones stand between the 'enclaved' state and the open sea. Thus, for example, as a result of the agreements implementing the decision in the *North Sea Continental Shelf* cases, the German continental shelf connects directly with the British for a small distance.[112]

The concern about enclavement may engage both types of perceived security interests. States prefer not to be surrounded by their neighbors. In some measure this concern may be political and psychological. States have articulated security concerns about their capacity to conduct and control activities off their coast. More concretely, states may be concerned about access between their territory and the open sea.

In three cases, the maritime zones of small states with the same coastal neighbor on either side were protected from enclavement by the use of parallel lines defining the small state's zones.[113] With respect to The Gambia, parallels of latitude were extended out into the open Atlantic.[114] Monaco received a corridor up to the outer limit of the territorial sea, as well as a corridor beyond extending up to an equidistant line with the opposite coast on the island of Corsica.[115] The boundary lines between Dominica, on the one hand,

[109] France–Italy (1986), No. 8–2.

[110] Italy–Yugoslavia (1975), No. 8–7(2).

[111] Denmark–Sweden (1984), No. 10–2.

[112] Federal Republic of Germany–United Kingdom (1971), No. 9–12. *See supra* note 90 and accompanying discussion.

[113] The land territory of the state concerned is itself surrounded by the other state in the first two cases.

[114] The Gambia–Senegal (1975), No. 4–2.

[115] France–Monaco (1984), No. 8–3. As Corsica is part of France, some 'enclavement' by French zones was ultimately unavoidable. *See supra* note 33.

and Martinique and Guadeloupe on the other, were extended in quasi-parallel fashion up to 200 miles on the Atlantic side.[116]

Where a state's boundaries with more than one state pose the risk of enclavement, one cannot be certain the risk has been avoided absent agreement on maritime boundaries with all of the neighboring states concerned. Boundaries between only two states nevertheless can be drawn so as to minimize the risk of enclavement when future boundaries are completed, thereby attempting as far as possible to assure each state access to the open ocean through its own zones and to avoid the presence of a foreign zone opposite a state's coast. This is precisely what the arbitral tribunal did in the *Guinea–Guinea-Bissau* arbitration.[117] Parallels of latitude were apparently used for this purpose in the seaward segments of the Kenya–Tanzania[118] and Mozambique–Tanzania[119] delimitations.[120]

F *Specific Clauses Protecting Navigation*

Delimitation agreements sometimes contain specific clauses protecting navigation interests. A number of these arise in a context where the clause appears to be related to the navigation implications of the particular maritime boundary. Others seem to reflect a more general concern about navigation that is not necessarily associated with any particular boundary location or configuration. It is not always easy to tell the difference.

The Argentina–Chile treaty makes elaborate provision for the protection of navigation, including a reaffirmation of freedom of navigation in and in the approaches to the Strait of Magellan.[121] The Australia–Papua New Guinea treaty contains extensive provisions designed to protect navigation and overflight in the Torres Strait area.[122] In the Maroua Declaration extending the maritime boundary between Cameroon and Nigeria, the 'two Heads of State further reaffirmed their commitment to freedom and security of navigation in the Calabar/Cross River channel of ships of the two countries as defined by

[116] Dominica–France (1987), No. 2–15.

[117] Guinea–Guinea-Bissau arbitration, *supra* note 33.

[118] Kenya–Tanzania (1976), No. 4–5.

[119] Mozambique–Tanzania (1988), No. 4–7.

[120] The 1969 Brazil–Uruguay joint declaration supporting equidistance may have been prompted by a desire to demonstrate to Argentina that the use of a parallel of latitude between Uruguay and Argentina would have an enclavement effect when coupled with a Brazil–Uruguay equidistant line, that the acceptability of a parallel of latitude method to Uruguay was therefore (apart from other objections) rationally dependent upon its acceptability to Brazil, and that Brazilian agreement was not likely. *See* Brazil–Uruguay (1972), No. 3–4. Although Argentina was not threatened with enclavement as such, the Argentina–Chile treaty reflects Argentine concerns about any cut-off of its extension into the Atlantic Ocean, and offers some support for the so-called bi-oceanic principle defended by Argentina (Argentina–Chile (1984), No. 3–1).

[121] Argentina–Chile (1984), No. 3–1.

[122] Australia–Papua New Guinea (1978), No. 5–3.

International Treaties and Conventions.'[123] In these cases, there appears to be a fairly close substantive link between these provisions and the underlying delimitation issues.

There are strong navigation and overflight provisions in the Netherlands–Venezuela agreement,[124] and a guarantee of transit passage between the islands of Trinidad and Tobago in the Trinidad and Tobago–Venezuela agreement.[125] More general clauses protecting navigation rights can be found in other agreements.[126] These clauses may have facilitated agreement either by constituting a quid pro quo for a particular boundary or in a more general sense.

IV HISTORICAL FACTORS

A *Introduction*

Historical factors are perhaps easier to isolate than political factors. Yet in the context of maritime boundaries, there is a great deal of overlap with other factors. Historic fishing may be viewed as a resource or economic factor. The question of using, or extending, an 'historical' boundary (or even a prior *modus vivendi*) for maritime delimitation purposes is laden with political as well as legal content.[127] In a strict sense, questions of historic bays or waters frequently may be regarded as baseline questions.

B *Land Boundaries*

In the normal case, a land boundary is better viewed as a geographic rather than an historic factor. The land boundary determines the allocation of coastlines from which maritime jurisdiction extends. In the case of adjacent states, the intersection of the land boundary with the sea constitutes the starting point for the maritime boundary. There are, however, some situations in which the land boundary takes on a broader historic significance with respect to a maritime boundary.

[123] Cameroon–Nigeria (1975), No. 4–1.

[124] The Netherlands (Antilles)–Venezuela (1978), No. 2–12.

[125] Trinidad and Tobago–Venezuela (1990), 2–13(3).

[126] For example, Argentina–Uruguay (1973), No. 3–2; Colombia–Panama (1976), No. 2–5; Dominican Republic–Venezuela (1979), No. 2–9 (preambular reference to Venezuelan navigation interests); India–Maldives (1976), No. 6–8. France and the United Kingdom made a separate joint declaration on navigation contemporaneously with their 1982 delimitation agreement (France–United Kingdom (1982), No. 9–3).

[127] Article 15 of the UN Convention on the Law of the Sea, *supra* note 44, like Art. 12 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, specifies with respect to delimitation of the territorial sea that the equidistance rule applicable in the absence of agreement to the contrary 'does not apply ... where it is necessary by reason of historic title or other special circumstances to delimit the territorial sea of the two States in a way which is at variance'

1 *Rivers Flowing into the Sea*

One such situation arises in an essentially technical context, namely where the center or thalweg of a river that flows into the sea constitutes the land boundary. Either the shore line at the mouth of the river in the case of a center-line boundary, or the channel in the case of a thalweg, may change position over time.

Mexico and the United States had to deal with this problem in establishing their territorial sea boundary in the Gulf of Mexico beyond the mouth of the Rio Grande.[128] The position of the Rio Grande at its mouth, as indeed in other places, changes over time. It is evident that the parties attached significant political, historical, and practical importance to the maintenance of the Rio Grande as the boundary: in contemporaneous settlements of outstanding disputes regarding their land boundary, their solution to the problem was cession of territories that fell on opposite sides of the river and agreement to attempt to stabilize the course of the river in the future.[129] In the case of the maritime boundary, a fixed point was established somewhat seaward of the mouth of the Rio Grande. Seaward of that point, a fixed maritime boundary was established. However, landward of that point, the boundary will migrate over time, connecting the fixed point with the center of the mouth of the river.

In the *Guinea–Guinea-Bissau* arbitration, the tribunal was faced with a similar problem of linking a fixed maritime boundary with the land boundary,

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therewith. Convention on the Territorial Sea and the Contiguous Zone, 29 April, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205. The delimitation rule in Art. 6 of the 1958 Convention on the Continental Shelf specifies that the equidistance rule applies '[i]n the absence of agreement, and unless another boundary line is justified by special circumstances'; there is no mention of historic title. Convention on the Continental Shelf, *supra* note 24. The delimitation rules articulated in Arts. 74 and 83 of the UN Convention on the Law of the Sea with respect to the exclusive economic zone and the continental shelf do not address the location of the boundary in the absence of agreement: they require that delimitation 'be effected by agreement on the basis of international law . . . in order to achieve an equitable solution,' that the States concerned resort to the dispute settlement procedures provided for in the Convention '[i]f no agreement can be reached within a reasonable period of time,' and that pending agreement 'the States concerned . . . shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement.' Article 298(1)(a) permits either party, at a minimum, to submit a maritime boundary dispute to conciliation. Article 298(1)(a) permits a party to declare that it does not accept arbitration or adjudication of disputes 'relating to sea boundary delimitations, or those involving historic bays or titles,' but in that event requires acceptance of submission of the matter to conciliation at the request of any party to the dispute. *See supra* note 74.

[128] Mexico–United States (1976), No. 1–5.

[129] Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary between the United States and Mexico, 23 November 1970, 23 U.S.T. 371, T.I.A.S. No. 7313. Mexico–United States (1976), No. 1–5. *See also* Convention for the Solution of the Chamizal Problem, 29 August 1963, 15 U.S.T. 21, T.I.A.S. No. 5515, 505 U.N.T.S. 185.

namely the thalweg of the Cajet River. Noting that the thalweg might migrate, the tribunal began the fixed boundary seaward of the mouth of the river, and specified that landward of that point the boundary would extend in the direction of the thalweg.[130]

2 *Direction of the Land Boundary*

Adjacent states sometimes argue that a maritime boundary should be established by extending the land boundary in the same direction out to sea. The territorial sea boundary prolongs the last segment of the land boundary between Turkey and the USSR in the same direction.[131]

The International Court of Justice rejected the Libyan argument that the maritime boundary should continue in the northward direction of the land frontier in the *Tunisia/Libya* case.[132] In the *Gulf of Maine* case, the United States argued that the general orientation of the continental boundary between the two countries suggested a generally east–west orientation of the maritime boundary, while Canada argued that the general orientation of the land boundary in the coastal region between Maine and New Brunswick suggested a generally north–south orientation of the maritime boundary. The Chamber appeared unimpressed by both arguments, and established the orientation of the maritime boundary seaward of the Gulf of Maine as a perpendicular to the generally northeast–southwest orientation of the coast.[133]

3 *Lines at Sea*

It is not uncommon for treaties dealing with cessions or allocations of sovereignty over islands or other territory to define the areas ceded or allocated between those states on the basis of lines drawn at sea. The essential purpose of those lines is to provide a convenient reference for determining which islands and territories are ceded or allocated to a particular party. Among other things, this approach avoids the need to identify precisely all islands and other territory ceded.

The question posed is whether those same lines (in light of the precise text of the relevant treaty, the original intent of the parties[134] or subsequent

[130] Guinea–Guinea-Bissau award, *supra* note 33, para. 129. *See* Guinea–Guinea-Bissau (1985), No. 4–3.

[131] Turkey–Soviet Union (1973), No. 8–10 (1).

[132] Tunisia/Libya Continental Shelf case, *supra* note 10, para. 85. The Court did however identify 'the factor of perpendicularity to the coast and the concept of the prolongation of the general direction of the land boundary' as 'relevant criteria to be taken into account' (*Id.*, para. 120).

[133] Case Concerning the Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States), 1984 I.C.J. REP. 246; Canada–United States (1979, judgment 1984), No. 1–3.

[134] It should be borne in mind that while at least parts of the lines in question may be at

practice, or otherwise as a relevant historical circumstance) are also to be used as maritime boundaries. For newly independent states, in particular, this issue may be linked to the importance they attach to the principle of *uti possidetis* as a means of avoiding boundary disputes and maintaining stable and peaceful relations.[135]

In the *Guinea–Guinea-Bissau* arbitration, after extensive analysis of the text of the treaty, its negotiating history, and subsequent practice, the tribunal rejected Guinea's argument that the line extending far out to sea drawn in an 1866 Franco–Portuguese treaty dividing their West African territories constituted a maritime boundary as such.[136] It nevertheless used this line, deeming it a relevant factor and otherwise equitable, for determining the location of the maritime boundary in a fairly significant area in the vicinity of the coast up to a point 12 miles seaward of Guinea's Alcatraz Island.[137] The tribunal pointed out that use of the seaward portions of the line as a maritime boundary would aggravate the problem of enclavement it was trying to find means to solve in the broader context of the West African coast.

The 1990 US–USSR agreement expressly identifies the maritime boundary as the line identifying the areas ceded in the 1867 US–Russia Convention regarding the purchase of Alaska.[138] The line drawn in the 1867 Convention is located entirely at sea and extends across the Bering Sea and due north into the Arctic Ocean.[139] It is the longest single maritime boundary in the world between two states, and delimits the territorial sea, the exclusive economic zone, and the continental shelf beneath and beyond the 200-mile

great distances from the nearest land, many of the treaties in question were concluded at a time when the territorial sea was the only generally accepted form of coastal state jurisdiction, and prevailing views regarding the maximum permissible breadth of the territorial sea revolved around the traditional three-mile limit or little more. On the other hand, this circumstance does not in itself resolve the question of whether a cession or allocation was so defined as to constitute a limit of such maritime jurisdiction as might be claimed by a party or permitted by international law at the time or in the future.

[135] The Solemn Declaration of 1964 by the Heads of State and Governments of the Organization of African Unity honoring boundaries existing at the time of independence is unquestionably regarded as fundamental by African experts who recognize the chaos that could result from challenges to the legitimacy of boundaries on grounds such as their imperial provenance or demographic rationality. It should be noted that Guinea-Bissau unsuccessfully challenged a 1960 maritime boundary agreed by Portugal and France (on behalf of Senegal) (Guinea-Bissau–Senegal (arbitral award 1989), No. 4–4). See note 153 *infra* and discussion at p. 36.

[136] Since the tribunal decided that the treaty did not establish a maritime boundary as such, it was able to avoid considering the effect of the *uti possidetis* principle (Guinea–Guinea-Bissau award, *supra* note 33, para. 85). *See* Guinea–Guinea-Bissau (1985), No. 4–3.

[137] Guinea–Guinea-Bissau award, *supra* note 33, paras. 105, 106, 111(a). *See* Guinea–Guinea-Bissau (1985), No. 4–3.

[138] United States–Soviet Union (1990), No. 1–6. The text of the 1867 Convention contains a comprehensive cession of all 'territory and dominion' east of the line. Convention ceding Alaska, 18/30 March 1867, 15 Stat. 539, T.S. 301, 11 Bev. 1216.

[139] Some historical features of the 1867 line may be of interest. It was originally drawn by the Russian Imperial Navy in connection with the Russian proposal to sell Alaska to the United States. The report of the Chairman of the Foreign Relations Committee to the US Senate in

exclusive economic zone. The agreement includes a transfer by each party to the other of coastal state jurisdiction beyond the maritime boundary to which the transferor but not the transferee would otherwise be entitled under international law.[140]

There are a number of other situations in which both parties may regard similar lines as constituting their maritime boundaries. These are not free from uncertainty.[141] An example is the following comment from the study of the maritime boundary between Burma (Myanmar) and Thailand:[142]

> The eastern terminus [of the boundary defined in the agreement] is about 47 n.m. from the mouth of the Pakchan River which marks the boundary between Burma and Thailand; it is suspected that the line joining this river mouth to the eastern terminus is the line shown on a map which was part of the boundary agreement [dividing islands] between Britain and Thailand dated 30 April and 3 July 1868, when Britain ruled Burma.

An analogous situation is presented by the maritime boundary between Finland and Sweden. Three turning points and one terminal point of the continental shelf boundary coincide with points established in the 1921 Convention concerning the non-fortification and neutralization of the Åland Islands.[143] However, subsequent fishing lines drawn by each of the parties do not use those points.

C *Prior Maritime Boundaries*

While widespread assertion and acceptance of coastal state jurisdiction over the continental shelf generally occurred in the decade or so following the 1945 Truman Proclamation on the continental shelf, widespread assertion

connection with its consideration of the 1867 Convention identifies as one of the benefits of the purchase the rich fisheries resources in extensive relatively shallow areas above what we would now call the continental shelf.

[140] The 1990 agreement followed an exchange of notes in the late 1970s in which each state indicated that it intended to respect the 1867 line in connection with its extension of fisheries jurisdiction to 200 miles. Subsequent to that exchange of notes, the parties found that they differed as to the proper depiction of the 1867 line and needed to address aspects of its effect. The precise line drawn in the 1990 agreement coincides with the 1867 line where the parties agreed on its depiction and, in the Bering Sea, is composed of segments all of which lie between or coincide with the differing depictions of the 1867 line as a loxodromic or a geodetic line.

[141] The regional summary report refers to the apparent use in the vicinity of the adjacent coasts of Malaysia and Thailand of a line drawn on a rough sketch in the protocol attached to a 1909 treaty which separated the territories of British Malaya from Thailand. The report also refers to the apparent use between Malaysia and Singapore of the line agreed in 1924 by Britain and the Sultan of Johore to define the extent of Singapore; that line coincided with the deep channel of Johore Strait.

[142] Burma (Myanmar)–Thailand (1980), No. 6–4.

[143] Finland–Sweden (1972), No. 10–3. The history can be traced further back to the 1809 Peace Treaty of Fredrikshavn between Russia and Sweden.

and acceptance of coastal state jurisdiction over fisheries, or a more comprehensive exclusive economic zone, extending to 200 miles did not occur for another 30 years or so, in many cases in conjunction with the emerging consensus at the Third United Nations Conference on the Law of the Sea. Thus, states that established a maritime boundary beyond the territorial sea for one purpose, for example delimitation of the continental shelf, may face the question of whether to use the same boundary to delimit jurisdictions claimed subsequent to the establishment of the maritime boundary, for example fisheries or exclusive economic zone jurisdiction.

The agreements between Finland and the USSR illustrate an affirmative response to that question. The parties used the two previously established continental shelf boundaries for fisheries delimitation purposes.[144] Subsequently they converted those continental shelf and fisheries jurisdiction boundaries into all-purpose single maritime boundaries, including the exclusive economic zone.[145] Similarly, Turkey and the USSR used their previously established continental shelf boundary to delimit their respective exclusive economic zones.[146] The line drawn in the historic 1942 seabed delimitation agreement between the United Kingdom and Venezuela with respect to the Gulf of Paria has been used, with some technical changes, in the single maritime boundaries drawn in the 1989 and 1990 agreements between Trinidad and Tobago and Venezuela.[147] On the other hand, the provisional fisheries surveillance and enforcement line agreed by Australia and Indonesia, for example, is substantially different from their earlier continental shelf boundary.[148]

History or prior practice may not alone explain the decision to use a previous line drawn within the 200-mile zone. That decision may be related to the recent practice of drawing a single maritime boundary for all purposes. Attempts to use different lines for different purposes within the zone raise a number of practical problems of allocation of jurisdiction demonstrated, for example, by the treatment of 'residual jurisdiction' in the Australia–Papua New Guinea agreement.[149]

[144] Finland–USSR (1980), No. 10–4(3).

[145] Finland–USSR (1985), No. 10–4(4).

[146] Turkey–USSR (1986/87), No. 8–10(3).

[147] Trinidad and Tobago–Venezuela (UK–Venezuela 1942), No. 2–13(1); (1989), No. 2–13(2); (1990), No. 2–13(3).

[148] Australia–Indonesia (1981), No. 6–2(4). It might be noted that the earlier continental shelf boundary between Australia and Indonesia in the area, presumably in partial response to Australian reliance on the concept of natural prolongation, was influenced by geomorphological factors (Australia–Indonesia (1972), No. 6–2(2)). Opinions of the International Court of Justice subsequent to that time placed substantially less emphasis on the concept of natural prolongation in continental shelf delimitation. The change in the Court's approach was itself influenced by the fact that the Third UN Conference on the Law of the Sea included sovereign rights over the resources of the seabed and subsoil within the concept of the 200-mile exclusive economic zone and defined the outer limit of the continental shelf alternatively in terms of natural prolongation or a 200-mile limit.

[149] *See* discussion preceding note 108 *supra*, p. 27.

A similar question may be presented where the territorial sea is extended to 12 miles in areas that were previously subject to claims of more limited jurisdiction. Some segments of the territorial sea boundary between France and Italy in the Straits of Bonifacio follow the alignment of a 1908 fishing delimitation agreement.[150] The boundary between Poland and Sweden in part follows a previous provisional fisheries boundary.[151] Following extension of the territorial sea to 12 miles, France and the UK agreed to modify the status of the boundary in the Straits of Dover from a continental shelf boundary to a territorial sea boundary.[152]

In the *Guinea-Bissau–Senegal* arbitration, the tribunal, by a vote of 2–1, agreed with Senegal that the 1960 Franco-Portuguese agreement delimiting the territorial sea, contiguous zone, and continental shelf bound the parties. The President, who voted in the majority, declared separately that because the 1960 agreement did not delimit the exclusive economic zone, the tribunal should have addressed that delimitation question. Guinea-Bissau instituted proceedings in the International Court of Justice to void the award. The Court declined to do so.[153]

An interesting variant of this issue involves the treatment of essentially the same question in successive maritime boundary agreements with different states. Thus, for example, the issue of reduced effect for Gotland was resolved between Poland and Sweden on the same basis that it was previously resolved between Sweden and the USSR, namely 75 percent effect.[154] The *North Sea Continental Shelf* cases nevertheless provide ample evidence of the limits of any strategy designed to impose such a result on a reluctant party.

D *Informal or De Facto Lines*

In some instances, an informal or *de facto* line used by both parties may become the basis for a maritime boundary. The maritime boundary agreed between Abu Dhabi and Dubai in 1965 was initially established as an administrative frontier for oil concession purposes in 1951.[155] In the *Tunisia/Libya* case, the International Court of Justice used a 1919 line drawn by Italian authorities when they were in control of Libya, noting that this was the *de facto* line respected by the parties as dividing their oil concessions.[156]

Determining the political or juridical effect of informal or *de facto* lines poses a delicate problem. It is desirable to encourage parties that are unable

[150] France–Italy (1986), No. 8–2.
[151] Poland–Sweden (1989), No. 10–10.
[152] France–United Kingdom (1988), No. 9–3.
[153] Guinea-Bissau–Senegal (arbitral award 1989), No. 4–4; case concerning the arbitral award of 31 July 1989 (Guinea-Bissau v. Senegal), 1991 I.C.J. REP.
[154] Poland–Sweden (1989), No. 10–10.
[155] Abu Dhabi–Dubai (1968), No. 7–1.
[156] Tunisia/Libya Continental Shelf case, *supra* note 10, paras. 93–96, 117, 120. It should be noted that this line is roughly perpendicular to the coast at the land boundary.

to reach agreement on a maritime boundary for the time being to find some interim *modus vivendi*.[157] Fears that a *modus vivendi* may, for political or juridical reasons, evolve into a permanent boundary or boundary regime may limit the ability of the parties to find means to control the scope and intensity of their dispute.[158]

E *Unilateral Claims*

Whatever their effect on baselines used for purposes of measuring equidistant lines[159] – which appears to be scant – there is no evidence that the limits of historic claims determine the location of modern maritime boundaries as such. In the *Tunisia/Libya* case, the International Court of Justice noted the distinction between historic rights or waters and rights over the continental shelf which arise *ipso facto* and *ab initio*.[160] It rejected use of a unilateral Tunisian fishing line and noted that the Libyan northward line on its official petroleum regulation map was insufficient even to constitute a formal claim.[161]

In connection with the influence of geomorphology in the Australia–Indonesia continental shelf boundary, one might note the earlier reference to a 100-fathom limit in the Australian Pearl Fisheries Act of 1952-53, as well as the limits specified in the 1967 continental shelf legislation in Australia dealing with the problem of competing state and federal assertions of jurisdiction.[162] Even if these references were not designed to deal with delimitation, but only with the general question of the definition and seaward limit of the continental shelf,[163] it is possible that the legislation, including the state-federal settlement, added to the political pressure on the Australian government to achieve a delimitation rooted in geology or geomorphology.

It is interesting to note that the agreement between India and Sri Lanka establishing a maritime boundary in Palk Strait and Bay deals with an area that the parties both regarded as historic waters originally appertaining to the United Kingdom prior to the independence of the two states concerned. The agreement provides for reciprocal recognition of traditional rights in that area.[164]

[157] See common para. 3 of Arts. 74 and 83 of the UN Convention on the Law of the Sea, *supra* note 44.
[158] Articles 74 and 83 of the UN Convention on the Law of the Sea, *supra* note 44, specify that provisional arrangements 'shall be without prejudice to the final delimitation.'
[159] This matter is addressed in Sohn, *Baseline Considerations*.
[160] Tunisia/Libya Continental Shelf case, *supra* note 10, para. 100.
[161] *Id.*, para. 92.
[162] Australia–Indonesia (1972), No. 6–2(2).
[163] Australian authorities were doubtless aware that the press release accompanying the 1945 Truman Proclamation on the continental shelf referred to the continental shelf as extending to a depth of approximately 100 fathoms. 4 Whiteman, DIGEST OF INTERNATIONAL LAW 757, 758 (1965). The Australian legislation in question was enacted prior to the decision in the North Sea Continental Shelf cases, *supra* note 11.
[164] India–Sri Lanka (1974), No. 6–10(1).

F *Prior Seabed Concessions*

Related to the question of unilateral claims, but distinguishable therefrom, is the problem posed by prior authorizations by a state for exploration or exploitation of the seabed. Absent acceptance or some adequate manifestation of acquiescence by the neighboring state concerned, unilateral seabed concessions do not establish maritime boundaries. The problem of private investment and expectations based on such authorizations nevertheless persists. The state that issued the authorizations may be responding to a variety of factors, including political pressure from its licensees, fear of liability to its licensees, or general considerations of fairness.

Denmark and the Federal Republic of Germany adjusted the line designed to implement the Court's decision in the *North Sea Continental Shelf* cases so as to permit some existing Danish licensees to remain on the Danish continental shelf.[165] Abu Dhabi and Qatar agreed to share ownership and revenues from a disputed field, but under the existing Abu Dhabi concession agreement.[166] The agreement between Australia and Papua New Guinea provides for certain protections under the laws of Papua New Guinea for holders of Australian exploration permits.[167]

G *Traditional Fisheries*

The impact of fisheries interests is addressed in the chapter on Economic and Environmental Considerations. There are, however, some cases where traditional fisheries might be regarded as an historic factor influencing the boundary agreement. Since some of these arrangements involve artisanal fisheries by indigenous peoples who are culturally or ethnically distinct or at least geographically isolated from the general populations of the states concerned, a political (if not juridical) factor relating to the protection of such peoples may also be discerned.

The most elaborate arrangement is to be found in the agreement between Australia and Papua New Guinea. It establishes a Protected Zone in the Torres Strait area providing for the continuation not only of traditional fishing but other traditional activities. Paragraph 3 of Article 10 provides:

> The principal purpose of the Parties in establishing the Protected Zone, and in determining its . . . boundaries, is to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement.

Pursuant to Article 11, 'each Party shall continue to permit free movement and the performance of lawful traditional activities in and in the vicinity of the Protected Zone by the traditional inhabitants of the other Party.'[168]

Prior settlement of issues related to the control of Indonesian traditional fishing apparently facilitated the negotiation of the provisional fisheries enforcement line between Australia and Indonesia.[169] In the case of the India–Sri Lanka boundary in the Gulf of Manaar and Bay of Bengal, Sri Lankan claims of historic fishing rights in Wedge Bank did not alter the location of the line, but did result in agreement on respect for Sri Lankan fishing rights for three years and a Sri Lankan right to purchase fish thereafter.[170]

In North America, the negotiation of a maritime boundary was regarded as part of a larger attempt to settle historic French rights to fish off Canada.[171] On the other hand, United States efforts to demonstrate historic fishing patterns and other historic activities in support of its position that it should receive all of Georges Bank did not succeed in the *Gulf of Maine* case. It should be noted, however, that the line drawn by the Chamber was more favorable to the United States than a hypothetical equidistant line, and that the Chamber implied that a line totally unresponsive to Canadian fisheries activities in the northeastern part of the bank would not be equitable.[172]

V CONCLUSION

There is no doubt that political factors influence the question of whether, and if so when, a maritime boundary will be negotiated or submitted to a tribunal for determination. The question of timing alone may influence the location of the boundary in response to an evolving jurisprudence in the field of maritime boundaries and changes in the regimes of the law of the sea more generally.

It is often difficult to demonstrate what particular influence political factors have on the precise location of a specific boundary. In this regard, however, it must be borne in mind that the interests governments seek to protect are frequently the result of a political analysis that may or may not reflect a hypothetical 'objective' analysis of those interests. A government's reasons for taking into account its neighbor's interests and perceptions in the context of a negotiated boundary are, at least in some respects, different in kind and degree from its reasons for doing so in its presentations before a tribunal.

[165] Denmark–Federal Republic of Germany (1969) No. 9–8. Judge Jessup suggested some arrangement in this regard. North Sea Continental Shelf cases, *supra* note 11, p. 81 (Sep. Op. Jessup, J.).

[166] Qatar–United Arab Emirates (Abu Dhabi) (1969) No. 7–9. The agreement between Sharjah and Iran regarding Abu Musa (claimed by both) provides that offshore petroleum will continue to be produced by Sharjah's concessionaire with governmental revenues being shared equally by the parties. This is discussed in Sharjah–Umm al Qaywayn (1964), No. 7–10.

[167] Australia–Papua New Guinea (1978), No. 5–3.

[168] Australia–Papua New Guinea (1978), No. 5–3.

[169] Australia–Indonesia (1981), No. 6–2(4).

[170] India–Sri Lanka (1976), No. 6–10(2).

[171] Canada–France (St. Pierre and Miquelon) (1972), No. 1–2.

[172] Gulf of Maine case, *supra* note 133, paras, 237–38; Canada–United States (Gulf of Maine) (judgment 1984), No. 1–3.

There is no direct evidence that tribunals take political factors as such into account in determining maritime boundaries. It can be argued that the broader regional analysis of the problem faced by the tribunal in the *Guinea–Guinea-Bissau* arbitration was to some, widely regarded as felicitous, degree 'political'. This author would be among those who believe the tribunal was, in effect, sensitive to the broader principles and purposes of the UN Charter and the OAU Charter in seeking means to promote peaceful relations among states.

The fact that adjudicated or arbitrated maritime boundaries tend to fall between those proposed by the parties may or may not reflect a tendency to strike a compromise. It can be argued that such results are inevitable where parties take maximum or extreme positions. At all events, the issue is merely one aspect of the broader question of whether arbitrators are prone to seek compromise results and, if so, whether that tendency is properly characterized as political.

Security factors are most prominent in dealing with maritime boundaries close to the coast, but they have influenced some boundary arrangements beyond the territorial sea. The evidence that states take security factors into account in negotiating maritime boundaries is probably insufficient to indicate the extent to which this is in fact done. In many situations security interests and other interests (such as commercial navigation or resource interests) coincide, and in many situations a variety of maritime boundaries may accommodate perceived security interests.

While states have raised security interests in arbitrations or adjudications, the arguments appear to have had different effects. In the *Libya/Malta* and *Guinea–Guinea-Bissau* cases, the tribunals tested the lines arrived at for other reasons against the coastal security concerns raised by the parties and found them sufficient. In the *Anglo-French* arbitration, the result was arguably responsive to France's security concerns about access in the English Channel. In the *Gulf of Maine* case, the United States, having noted that an equidistant line would extend as far south as Philadelphia, outlined its perception of Canadian tendencies to expand coastal state jurisdiction both geographically and functionally; the point had no explicit effect on the Chamber's analysis.

Historical factors can influence both negotiated and adjudicated boundaries. The most significant effect occurs in the use of lines primarily drawn for some other purpose, such as delimitation of a different form of maritime jurisdiction or allocation or cession of islands and other land territory. There is evidence of some tendency to use continental shelf boundaries to delimit fisheries or exclusive economic zones. On the whole, however, there is no consistent pattern. Each case must be examined closely in terms of the legal significance of the historical factor as well as the political, security, geographic, and economic impact of taking it into account or failing to do so.