

Annotated Bibliography: Delimitation of Exclusive Economic Zone Boundaries Between Opposite and Adjacent States and the Gulf of Maine Dispute

Nora T. Terres

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mjil>



Part of the [International Law Commons](#), and the [International Trade Commons](#)

Recommended Citation

Nora T. Terres, *Annotated Bibliography: Delimitation of Exclusive Economic Zone Boundaries Between Opposite and Adjacent States and the Gulf of Maine Dispute*, 9 Md. J. Int'l L. 181 (1985).

Available at: <http://digitalcommons.law.umaryland.edu/mjil/vol9/iss1/9>

This Notes & Comments is brought to you for free and open access by DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Journal of International Law by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

ANNOTATED BIBLIOGRAPHY*

DELIMITATION OF EXCLUSIVE ECONOMIC ZONE BOUNDARIES BETWEEN OPPOSITE AND ADJACENT STATES AND THE GULF OF MAINE DISPUTE

Brown, "Delimitation of Off Shore Areas: Hard Labour and Bitter Fruits at UNCLOS III," 1981 MARINE POL'Y 172.

Brown analyzes and evaluates the provisions of the Law of the Sea Convention concerning the delimitation of maritime zones and the settlement of related disputes. The first part of the article deals with the territorial sea and the contiguous zone. The second part deals with the continental shelf and the exclusive economic zone. The third part deals with the delimitational problems of islands. The author concludes that these provisions leave much to be desired.

Charney, "Ocean Boundaries Between Nations: A Theory for Progress," 78 AM. J. INT'L L. 582 (1984).

Charney criticizes the *Tunisia/Libya Continental Shelf* judgment which he characterizes as result-oriented. He contends that the Court should have clearly articulated an analysis that weighed all the relevant factors in order to find the most appropriate line, but did not. The author believes that more specific rules of maritime boundary delimitation must be developed and that the Court's extremely fact-intensive approach may stimulate disputes. He suggests that the Court focus more on the purposes to be served by coastal state jurisdiction in the ocean zones in question, and less on the acceptability of the boundary to the parties.

Specifically, he proposes a five-step factor analysis. First, the functions served by the jurisdictional regimes to be delimited and the factors relevant to those functions, would be identified. Then possible boundary lines reflecting each factor would be generated. Finally, the relative importance of the various factors would be weighed and a line developed that best accommodates these factors. In order to fully explain his proposal, the author applies the analysis to a delimitation of

* Compiled and annotated by Nora Terres.

the exclusive economic zone.

Collins & Rogoff, "The International Law of Maritime Boundary Delimitation," 34 ME. L. REV. 1 (1982).

The authors contend that specific rules and principles of customary international law concerning maritime boundary delimitation already exist and that these rules and principles are applicable to delimitations of a single maritime boundary for both the continental shelf and the exclusive economic zone. They survey state practice in negotiating single boundary agreements and analyse conventional and decisional law. They conclude that geographical factors are primary in delimiting either the continental shelf or the exclusive economic zone or both. Specifically, they contend that the customary law calls for an equidistance line—adjusted if necessary for proportionality. They argue that non-geographic factors, such as geology and economic dependency, play a subsidiary role and only in exceptional circumstances may justify minor variances from a line determined by reference to geographic factors.

Comment, "Boundary Delimitation in the Economic Zone: The Gulf of Maine Dispute," 30 ME. L. REV. 207 (1979)

This comment surveys the historical background of maritime boundary delimitation including the work of the International Law Commission, the 1958 Geneva Conventions, examples of State practice and the major international cases. In addition, a brief history of the Gulf of Maine dispute is presented and the arguments of Canada and the United States are reviewed. The authors emphasize equity and argue that an economic zone boundary should be consonant with "the reality of a unified and interdependent ocean environment."

Evensen, "The Delimitation of Exclusive Economic Zones and Continental Shelves," in THE NEW LAW OF THE SEA 107 (1983).

Evensen analyzes in detail the *North Sea Continental Shelf Cases*, the *Anglo-French Continental Shelf* arbitration and the *Tunisia/Libya Continental Shelf* case. He criticizes the *Tunisia/Libya* judgment as verging on a decision *ex aequo et bono* and as virtually elevating the proportionality test to the status of a principle of international law. He also discusses the provisions of UNCLOS III concerning the delimitation of maritime boundaries. In the final section, the author focuses on the delimitation of exclusive economic zones. He suggests that the advent of the exclusive economic zone, which includes jurisdiction over both fisheries and the seabed, based on a distance criterion, will markedly decrease the importance of the natural prolongation concept, which is geological. He also suggests that the lines delimiting economic

zones and continental shelves between neighboring states would ordinarily coincide.

Hodgson & Smith, "Boundaries of the Economic Zone," in *LAW OF THE SEA: CONFERENCE OUTCOMES AND PROBLEMS OF IMPLEMENTATION* 183 (1977).

This article traces the evolution of the law of maritime boundary delimitation. The authors discuss the development of territorial sea boundaries, the 1958 Convention on the Continental Shelf, the post-1958 state practice in delimiting maritime boundaries, the *North Sea Continental Shelf* cases and the negotiations on maritime boundary delimitation at the Third United Nations Conference on the Law of the Sea (UNCLOS III). They predict that negotiators delimiting the water column will probably emphasize equity, at least until the Convention comes into force and more state practice is available for reference. They also predict that despite the diminished emphasis on equidistance it will continue to be used in situations where it will produce an equitable boundary.

Hodgson & Smith, "Boundary Issues Created by Extended National Jurisdiction," 69 *GEOGRAPHICAL REV.* 423 (1979).

The authors analyze in detail the law of maritime boundary delimitation from the Truman Proclamation through the negotiations at UNCLOS III and include discussion of international conventions, juridical decisions, and state practice. They pose questions as to how that law will be extended to delimitations of fisheries zones and exclusive economic zones, but do not suggest any clear answers to those questions.

T. L. McDorman, K. P. Beauchamp, & Douglas M. Johnston, *MARITIME BOUNDARY DELIMITATION: AN ANNOTATED BIBLIOGRAPHY* (1983).

This extremely useful book consists of bibliographic entries and annotations describing books and articles in the area of maritime boundary delimitation. It covers delimitation of the territorial sea, the continental shelf and the exclusive economic zone. It also includes sources dealing with the major international adjudications of maritime delimitations, disputes in particular areas—such as Canada-United States disputes, and intra-state boundaries. An appendix lists bilateral agreements in which countries have delimited maritime boundaries between them. Each agreement is listed with information on what countries are involved, the title and date of the agreement, and in what sources the text of the agreement can be found.

McRae, "Adjudication of the Maritime Boundary in the Gulf of Maine," 17 *CAN. Y. B. INT'L L.* 292 (1979).

McRae's article, written before the U.S. Congress rejected the East Coast Fisheries Agreement, discusses the original provisions of the Boundary Settlement Treaty, and not the ratified and final version. He concludes that the treaty, which gives the parties, in effect, a veto over the Chamber's composition, is compatible with the Statute and Rules of the International Court of Justice. He also discusses the importance of the *Gulf of Maine* case and the repercussions it will have, both on the general law of maritime boundary delimitation and on relations between the United States and Canada.

McRae, "The Gulf of Maine Case: The Written Proceedings," 21 CAN. Y. B. INT'L L. 266 (1983).

This article sets forth the arguments of the United States and Canada in the *Gulf of Maine* case, as contained in the written proceedings.

McRae, "Proportionality and the Gulf of Maine Maritime Boundary Dispute," 19 CAN. Y. B. INT'L L. 287 (1981).

Proportionality is the principle that the relative lengths of the coastlines of the parties should be taken into account in the delimitation of a maritime boundary between opposite or adjacent states. The author reviews the development and application of proportionality in the *North Sea Continental Shelf* cases and the *Anglo-French* arbitration, and the controversy among commentators concerning the role of proportionality. He concludes that the principle of proportionality is not applicable in the *Gulf of Maine* case.

Note, "International Adjudication: Settlement of the United States/Canada Maritime Boundary Dispute," 23 HARV. INT'L L. J. 138 (1982).

This note focuses on the use of the chamber procedure in the *Gulf of Maine* case. It briefly discusses the provisions of the Boundary Settlement Treaty between the parties, the order of January 20, 1982, in which the International Court of Justice constituted a chamber for the *Gulf of Maine* case, and the dissents to that order. The author points out that allowing the parties to control the composition of their chamber has costs as well as benefits. On the one hand, the chamber procedure may encourage increased use of the Court, on the other hand, the use of regional chambers—the *Gulf of Maine* Chamber was composed entirely of justices from industrialized western states—could cause a split in the law, particularly when issues of first impression are being decided. The author concludes that the scope of the procedure will have to be carefully controlled.

Note, "International Conflict Resolution: The ICJ Chambers and the Gulf of Maine Dispute," 23 VA. J. INT'L L. 463 (1983).

This note discusses the use of the chamber procedure in the *Gulf of Maine* case. It does not refer, however, to the ratified and final version of the Boundary Settlement Treaty. The author characterizes the case as "a harbinger of a gradual movement toward a more significant position for the ICJ in the resolution of international disputes."

Rhee, "The Application of Equitable Principles to Resolve the United States-Canada Dispute over East Coast Fishery Resources," 21 HARV. INT'L L. J. 667 (1980).

Rhee's article focuses on the proposed East Coast Fisheries Agreement. Written before the final rejection of that Agreement by the U.S. Congress, it sets forth the provisions of the Agreement and outlines the obstacles to its ratification by the United States. The author suggests that the parties renegotiate the Agreement and, in particular, that the Agreement should not be permanent, but only serve as an interim measure until the boundary question is settled and a new agreement negotiated based on the final boundary.

Rhee, "Equitable Solutions to the Maritime Boundary Dispute Between the United States and Canada in the Gulf of Maine," 75 AM. J. INT'L L. 590 (1981).

Rhee begins this article by reviewing the background of the *Gulf of Maine* dispute and the reasons for the non-ratification of the Fisheries Agreement. Next, the author discusses the applicable law, including the *North Sea Continental Shelf* cases, the *Anglo-French Continental Shelf* arbitration, state practice, and UNCLOS III negotiations, and outlines the central arguments of the parties. In the final section of the article, he proposes his own solutions. Rhee states that an equidistance line would be equitable in the northern corner of the Gulf, but becomes inequitable in the central area of the Gulf because of the difference in the lengths of the coastal fronts of the parties, *i.e.*, equidistance lacks proportionality. An equitable boundary in this area would be "an oceanward straight line starting from a certain terminus of the equitable equidistance line before it protrudes into the central area of the Gulf, perpendicular to the general direction of the southeastern coasts of New England and Nova Scotia, which would divide the area . . . in accordance with the doctrine of proportionality." Although the Chamber did not follow the exact delimitation methods Rhee suggests, the boundary line it constructed fits this general description remarkably well.

Swan, "That Gulf of Maine Dispute: Canada and the United States Delimit the Atlantic Continental Shelf," 10 NAT. RESOURCES LAW. 405 (1977).

This article provides a background to the *Gulf of Maine* dispute from early 1976 and describes the arguments of Canada and the United States. The author discusses the *North Sea Continental Shelf* cases in great detail as instructive precedent. Based on his analysis of the *North Sea* cases, he concludes that the United States had a stronger legal position in the *Gulf of Maine* dispute than Canada did and would be more successful in any adjudication of the controversy.

D. VanderZwaag, *THE FISH FEUD* (1983).

This book discusses the dispute between the United States and Canada over fishery resources, but it does not discuss the boundary delimitation issue. Chapter One summarizes the geography and oceanography of the Gulf of Maine-Georges Bank region and reviews the distributions of major fish stocks. Chapters Two and Three explain the fisheries management systems of the United States and Canada. Chapter Four analyzes the ill-fated East Coast Fisheries Agreement of 1979. Chapter Five concludes with a discussion of ways in which the fisheries management problems between the United States and Canada might be resolved in the wake of the ICJ's delimitation of the boundary in the Gulf of Maine area.