

CASE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY IN THE GULF OF MAINE AREA (CANADA/UNITED STATES OF AMERICA)

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ABSTRACT

*The case is an issue upholding maritime boundary dispute subject to adjacency measured from the coast in furtherance to **SPECIAL AGREEMENT (Dated: 29th MARCH, 1979)**, a matter in issue between the states of Canada and U.S.A on the different ends put to subject under The Gulf of Maine. The issue was put to ICJ's Jurisdiction as filed under General List on the 25th Day of 1981's November as per the specifications of the agreement to be decided under the specified norms of INTERNATIONAL LAW, which shall include the norms, the treaties, International Customary Laws and all that is a recognized part of sources under the embarkments established under International law. The case was a precedence which delimited the theory of Natural Prolongation, a recognized theory till contradicted.*

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1. INTRODUCTION

The case was filed to be entered on the General List on November 25th, 1981 (Number 67). The judgement that was subject to order made on 12th October 1982, stated 12th October 1984 to be the day of judgement.

The case is subject to 8 volumes and orders.

VOLUME NO.	ORDERS
Volume 1	Memorial by Canada on Special Agreement.
Volume 2	Memorial submitted by United States of America.
Volume 3	Counter-Memorial by Canada.
Volume 4	Counter-Memorial by U.S.
Volume 5	Replies submitted by Canada and U.S.
Volume 6	Oral Arguments (commenced).
Volume 7	Correspondence with respect to documents submitted after closure of written arguments and conclusion of Oral Arguments.
Volume 8	Illustrations, Charts and Maps.

- The case is subject to AGREEMENT ON EAST COAST FISHERY RESOURCES, 1979.
- Primarily the point put to arguments were with respect to principles^[1] which was further extended to practical methods for its implementation^[2] and lastly the level had been raised to Principle of Law.^[3]
- This case was the first one that was subject to the Law of Sea Convention. It was the failure of consensus on UNCLOS III that the text of Articles 74 and 83 of the United Nations Convention on the Law of the Sea was adopted.^[4]

2. Issues Evolved

1. Analysis of Special Agreement (29th March, 1979)
2. Theory of Natural Prolongation.

3. CANADA's Arguments

Canada states to have committed itself to a clearly defined and integrated set of principle and definite method and line. Canada has put up that its line is based on the legal content of 200-mile zone subject to adjacency measured from the coast. ^[5]

It further puts up that U.S. has given two alternative and conflicting theories, both equally novel and unfounded. The theory of perpendicular and the theory of natural boundary so contended are mutually exclusive. ^[6] On the other hand, Canada has been using the continental shelf as permitted since 1960s and same is defined and legally recognized. The theories reflect two different vision to appurtenance with respect to “geographical correlation” of the coast and the sea. ^[7]

The theories have been subject to not good or bad but the contradictions and same shall not point in the direction of coherent result.

It was further stated that the coast of Maine has no coastline that borders the outer area but has two major coastal areas, namely, Massachusetts and Nova Scotia that are a part of area delimited and lies closer to Georges Bank. And fishing operations are basically carried out in the coasts mentioned and not the Georges Bank and this is where the judgement shall fall in.

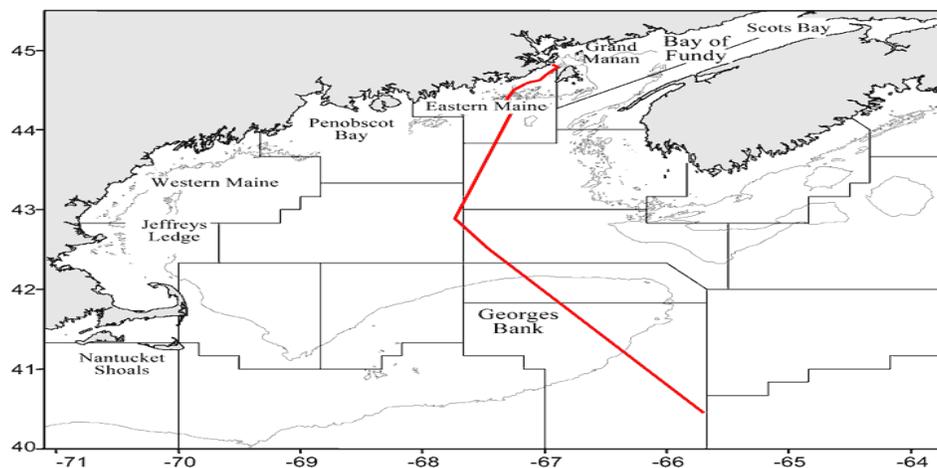


Figure 1.1. Map of the Gulf of Maine, Georges Bank, and the Bay of Fundy illustrating NAFO area boundaries and the location of areas discussed in the document.

CANADA further contends that Georges Bank is closer to its boundary than that of U.S. The Nova Scotia's south-west is subject to fisheries on the bank.

Canada has also contended that U.S. has failed to meet Canada's Argument on Acquiescence and Estoppel and to counter the same U.S. has been giving irrelevant arguments, an example of which was seen in counter stating that the official representing Canada for the contention shall have a binding authority on state to contend, ^[8]where the authority to bind is of no relevance but to set aside the burden they are putting up argument that surely has avoided a satisfactory joinder to issue. Further the existence of public activity affecting legal rights and absence to protest reservation of rights is a point that has to be essential to rebuttable but same has not been done, thereby, Mr. Rashkow (The Representative of U.S.A) fails to position.

4. U.S.A's Arguments

Mr. Robinson as the agent to represent U.S., initiated by emphasizing on the words of the agreement that principles and rules of law be subject to norms of international law.

The state further contends that both the States have been sharing equal and common legal tradition and The State of Canada has been attempting to reject notion of proximity, the notion is such that each state is to attract the area of the sea that is stated closest to its coast irrespective of it cutting off the coastal extension of neighboring states and it shall not matter if it is extraordinary, unreasonable, unnatural or disproportionate and the extent of the same as well shall not matter. U.S. states that if this notion is not accepted then it shall be a disguised attack on the fundamental rules of maritime delimitations and to further contend the coast being closer is of no relevance with respect to law and is merely a point of fact or opinion.

U.S. further contends that natural boundary theory was never subject or never included theory of coastal geography, theory of appurtenance and theory of natural prolongation in its ambit but the case is based on the issue of Northeast Channel and fishing banks. The Channel has been found to separate most of the important stock on bank from the stock on the Scotian Shelf.

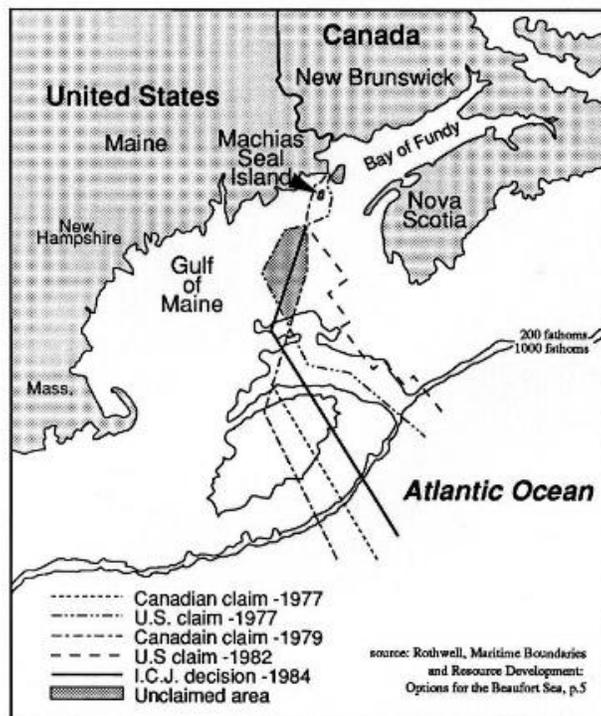
With respect to 1982 Convention on law of seas that U.S. has not signed, extensive parts deal with navigation, overflight and provisions of the convention shall not be motivated.

U.S. has been contending that exploration and exploitation of Georges Bank's resources by Canada shall be reached in the continental shelf boundary and the same permit is not recognized.

Failure in Political Compromise has failed the agreement and also identification of boundaries between the same has also failed. The contention of the contract being a quasi-legislative act under ex aequo et bono has been set aside in furtherance to the previous contentions.

5. CONCLUSION

The basic purpose being the delimitation of single boundary for the Fisheries zone and EEZ, the Chamber stated that effect of the application of equitable criteria and practical approach shall be an equitable result in geographic configuration and other relevant circumstances.



• ANALYSIS OF SPECIAL AGREEMENT (29th MARCH, 1979)

The Agreement undoubtedly is valid and is subject to roots of International Law, starting from Customary International Law to any other Substantive Law that shall include international treaty law. It shall have a binding effect subject to the method for delimitation of single maritime boundary in the inner sector of the gulf.

- **Theory of Natural Prolongation**

It being a concept of Political Geography and International Law has stated that nation's maritime boundaries should show up as to where its land territory reaches the specified zones. The concept was introduced to settle disputes concerning adjacent borders located on Contiguous continental shelf. Further with respect to coastal waters concerning oceanographic descriptions of the land mass has been a confused issue in deemed relevant border delimitation.

The theory has been declined during the period in which it was to be expanded in UNCLOS III^[9] The Malta/Libya Case in 1985^[10]; in 1985 is marked as the eventual demise of the *natural prolongation* principle being used in delimiting between adjoining national maritime boundaries.^[11]

- **Theory of Equidistance Principle**

The other theory is the **equidistance principle** or **principle of equidistance**, the so stated legal concept states that a nation's Maritime boundaries should have a line equidistant from the shores of neighboring nation-states, with the equidistant line being the one which is equidistant from the nearest point of baselines used. The principle was endorsed by UNCLOS treaty and has been predate used by U.S. Supreme Court as well.^[12]

End Notes

[1] ICJ 1969 Reports, p. 6

[2] Tunisia/Libya case

[3] ICJ 1982 Reports, p. 21

[4] United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter Law of the Sea Convention].

[5] Art 6 of Continental Shelf Convention.

[6] Mr. Legault, agent for Canada stated in 19th public sitting, p. 4

[7] ICJ 1982 Reports, p. 61, para 73.

[8] ICJ 5 IV 84 'Rejoinder of Professor Bowett' p. 94 para 2

[9] Kaye, Stuart B. (1995). *Australia's maritime boundaries*, pp. 12, 172.

[10] Case Concerning the Continental Shelf (Libyan Arab Jamahiriya v Malta) (Judgment) [1985] *ICJ Reports* 13 at 29.

[11] Hight, *pp. 91–95*, p. 91, at [Google Books](#)

[12] "Federal Outer Continental Shelf (OCS) Administrative Boundaries Extending from the Submerged Lands Act Boundary seaward to the Limit of the United States Outer Continental Shelf," *Federal Register*, January 3, 2006 (Volume 71, Number 1) pp. 127–131.