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States, Boundaries, Continental Shelf, Obligations

technology to the country had virtually stopped.⁸⁸ Transfer of technology to the Andean Pact countries is reduced,⁸⁹ and in Brazil it is anticipated that the combination of very restrictive laws, uncertainty as to how those laws will be interpreted, and administrative delays, will cause many suppliers to question the advisability of transferring their technology to that country.⁹⁰ Thus, a too restrictive law or a poorly administered law will result in a decrease in the transfer of technology to a country.

Mexico's Old Technology Law was very ably administered.⁹¹ The New Technology Law provides that procedures and guidelines for the administration and interpretation of the law are to be similarly promulgated.⁹² The promulgation of these procedures and guidelines will hopefully result in increased certainty for the contracting parties, and there is no reason to anticipate that the staff of the Register will not continue its history of competent and fair administration. Therefore, although some decrease in the flow of technology to Mexico seems quite likely as a result of the enactment of the new law, the decrease probably will not be sufficient to halt or severely retard Mexico's economic growth.

Wannell Baird

The Gulf of Maine Maritime Boundary Dispute

The ratification of the Maritime Boundary Settlement Treaty (Treaty) by the Governments of Canada and the United States concludes thirteen years of negotiation during which the two countries failed to settle the dispute over the delimitation of the maritime boundary in the Gulf of Maine area. The Treaty signifies both a departure from the usual course of dispute settlement between the United States and Canada and the emergence of a new forum for the settlement of international disagreements by binding third-party adjudication. Substantively, the Treaty will provide the International Court of Justice (I.C.J.) the opportunity to further clarify existing international law in the area of continen-

88. TECHNOLOGY TRANSFER, *supra* note 7, at 218-19; Kantor, *supra* note 19, at 573.

89. TECHNOLOGY TRANSFER, *supra* note 7, at 82-85. The Andean Pact was formed in 1969 and is intended to be similar to the European Common Market. The current Andean Pact members are Venezuela, Bolivia, Ecuador, Peru and Columbia. Kantor, *supra* note 19, at 553.

90. TECHNOLOGY TRANSFER, *supra* note 7, at 203-04.

91. *Id.* at 9-10.

92. New Technology Law, *supra* note 2, at arts 8-9.

tal shelf/maritime boundary delimitation. The final decision will herald far-reaching ramifications for the settlement of future delimitations of 200-mile exclusive economic zones as well as delimitations of fishery zones and water columns which lie above the continental shelf.

The current dispute has arisen as a result of conflicting claims of Canadian and U.S. jurisdiction within the Gulf of Maine-Georges Bank area.¹ Approximately 12,000 square miles of extraordinarily fertile fishing grounds is at issue. The United States claims the region as its own, invoking the equitable principle of natural prolongation,² while Canada's claimed boundary extends south as a result of its adherence to an "equitable-equidistance line."³ Attempts to negotiate the dispute resulted in the signing of the Fisheries Agreement⁴ and the Boundaries Settlement Treaty⁵ in 1979. Although each treaty was an agreement independent of the other, Canada stipulated that both must be ratified in order for either to take effect. Apparently, the linkage was insisted upon so that a balance of interests would serve as security against a possible "winner-take-all" decision in the adjudication of a third-party settlement.⁶

However, the Fisheries Agreement ran into immediate opposition from the fishing interests of the United States, and consequently, the new

1. The source of the conflict lies in the Truman Proclamation of 1945 in which the United States extended its jurisdiction over the adjacent continental shelf to 200 miles. The 1976 enactment of the Fisheries Conservation and Management Act extended the exclusive fisheries zone from twelve nautical miles to 200 nautical miles. The passage of the act brought about the current situation in which both Canada and the United States have been vying for the same portion of the resource-rich Georges Bank. For an excellent overview of the history of the Gulf of Maine dispute, see 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).

2. 41 Fed. Reg. 48,619 (1976).

3. The rationale behind the Canadian claim is based upon the 1977 Anglo-French Arbitration opinion in which the International Court of Justice stated that a land extension could be regarded as a "special circumstance" which could have a "distorting effect" on marine boundary delimitations. Therefore, by discounting the effect of Cape Cod and Nantucket Island, the Canadians have arrived at a very favorable "equitable-equidistance line." 112 Can. Gaz., Extra No. 79, pt. I (Sept. 15, 1978).

4. Agreement Between the Government of the United States and the Government of Canada on East Coast Fishery Resources, Message from the President of the United States Transmitting the Agreement of East Coast Fishery Resources with Canada, 1979, S. EXEC. DOCS. U AND V., 96th Cong., 1st Sess. (1979), reprinted in 9 NEW DIRECTIONS IN THE LAW OF THE SEA, 157, 178 (M. Nordquist & K. Simmonds eds. 1980).

5. Treaty to Submit to Binding Dispute Settlement the Delimitation of the Maritime Boundary in the Gulf of Maine Area, Mar. 29, 1979, United States-Canada, — U.S.T.—, T.I.A.S. No. —, reprinted in 20 I.L.M. 1371 (1981) [hereinafter cited as Boundary Settlement Treaty].

6. For background material relating to the linkage of the two treaties, see *Fishery Conservation and Management Act: Hearings Before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the House Comm. on Merchant Marine and Fisheries*, 96th Cong., 1st Sess. at 59-60 (1979); *Maritime Boundary Settlement Treaty and East Coast Fishery Resources Agreement: Hearings Before the Senate Comm. on Foreign Relations*, 96th Cong., 2d Sess. 35, 61-62 (1980).

Reagan Administration urged Senate ratification of the Maritime Boundary Settlement Treaty while concurrently withdrawing from the Fisheries Agreement. This unilateral delinkage action by the United States severed the two treaties as well as the dual ratification requirement which was initially necessary to bring the agreements into effect.⁷ The Fisheries Agreement is no longer operative despite Canada's strong disapproval of the delinkage. However, in an effort to proceed with what remained of the two original agreements, both countries exchanged instruments of ratification for the Treaty to Submit to Binding Dispute Settlement the Delimitation of the Maritime Boundary in the Gulf of Maine Area.⁸ The dispute that the Treaty addresses is currently before a Chamber of the International Court of Justice awaiting adjudication.

It is significant that the I.C.J. Chamber will be used to determine the delimitation of the Gulf of Maine maritime boundary because this particular dispute settlement format has not been utilized since its adoption in 1972. Because the goal of the new format is to simplify and expedite litigation, it has been designed to ensure the economy of proceedings before the Court while providing the greater flexibility of an arbitration proceeding.⁹

The parties involved have significant input as to who and how many members shall constitute the Chamber.¹⁰ Even though the Court possesses appointment and veto power, it has previously implied that the parties maintain substantial control over the composition of the Chamber.¹¹ If the Court had appointed judges to the Chamber who were unacceptable to both parties, the parties could have arbitrated or discontinued the proceedings entirely.¹² Two additional benefits result from this proceeding. First, the decision of the Chamber is binding upon the parties. Second, the judgment of a fairly small Chamber is anticipated to be more direct and clear in its expression.¹³

Although the traditional means of settling U.S.-Canadian disputes

7. SENATE COMM. ON FOREIGN RELATIONS, REPORT ON THE MARITIME BOUNDARY SETTLEMENT TREATY WITH CANADA, S. EXEC. REP. NO. 5, 97th Cong., 1st Sess. 2 (1981), reprinted in 20 I.L.M. 1383 (1981) [hereinafter cited as 1981 SENATE REP.].

8. Boundary Settlement Treaty, note 5 *supra*.

9. The Rules of the Court provide that when the parties request the Chamber forum to adjudicate an action, the parties shall be consulted regarding the composition of the Court, and their approval shall be sought as to the "number of Members who are to constitute the Chamber." This provision exemplifies a means by which the Chamber format is able to provide a formal judicial decision while adhering to a more flexible standard of procedure. Rules of the Court, INTERNATIONAL COURT OF JUSTICE, ACTS AND DOCUMENTS CONCERNING THE ORGANIZATION OF THE COURT, art. 17 (1978) [hereinafter cited as Rules of the Court], reprinted in 73 AM. J. INT'L L. 1748 (1978); See de Arechaga, *The Amendments to the Rules of Procedure of the International Court of Justice*, 67 AM. J. INT'L L. 1 (1973).

10. Rules of the Court, note 9 *supra*.

11. Discussion by R. St. J. Macdonald (1978), reprinted in 1 CAN.-U.S. L.J. 31 (1978).

12. Rules of the Court, *supra* note 9, at art. 88.

13. Macdonald, *Settling Our Canadian-United States Differences: A Canadian Perspective*, 1 CAN.-U.S. L.J. 12 (1978).

has been through negotiation rather than through litigation,¹⁴ both governments have agreed to submit this particular delimitation question to the Chamber. This is even more unusual in light of Canada's refusal to recognize the jurisdiction of the I.C.J. in respect to "disputes arising out of or concerning jurisdiction or rights claimed or exercised by Canada in respect of the conservation, management or exploitation of the living resources of the sea."¹⁵ Nevertheless, Canada and the United States have agreed to submit this particular dispute to the Chamber because of the unique merits which this third-party proceeding possesses.

The Maritime Boundary Settlement Treaty, ratified by the U.S. Senate, contains a number of technical amendments, two of which are notable. First, article IV was amended so that the Treaty could enter into force without the ratification of the Fisheries Agreement.¹⁶ Second, the provision in the Special Agreement which allowed each party to select a non-national judge to sit on the Chamber was deleted because the provision did not comply with article 31 of the Statute of the Court.¹⁷ Instead, the Court was empowered to appoint all five members of the Chamber, "after consultation with the Parties, and pursuant to article 26(2) and article 31 of the Statute of the Court and in accordance with this Special Agreement."¹⁸ The Court has adhered to this amendment by its recent election of judges to the Chamber.¹⁹ However, the stated purpose of the Treaty is the same: it is "to provide for the delimitation of the maritime boundary in the Gulf of Maine Area by a Chamber of the International Court of Justice or, if such a Chamber cannot be constituted in accordance with the wishes of the Parties, by an ad hoc Court of Arbitration."²⁰

The Treaty consists of four articles and two annexed Agreements. The Agreements provide for the procedures of binding third-party settlement. The Special Agreement²¹ sets forth the manner in which the boundary dispute will be submitted before a Chamber of the I.C.J. If the Chamber could not have been constituted in a manner satisfactory to the

14. Commentary by Marcel Cadieux, *reprinted in* 1 CAN.-U.S. L.J. 19 (1978).

15. H.C. DEB. (Can.), 1970, Apr. 8 at 5623-24, *noted in* Macdonald, *The New Canadian Declaration of Acceptance of the Compulsory Jurisdiction of the International Court of Justice*, 8 CAN. Y.B. INT'L L. 34 (1970).

16. 1981 SENATE REP., *supra* note 7, at 1389.

17. *Id.*; I.C.J. STAT. art. 31(4) states that the Court always elects members to the Chamber, with the one exception that a party may elect a judge if no member of the Chamber is of the party's nationality.

18. 1981 SENATE REP., *supra* note 7, at 1389.

19. Delimitation of the Maritime Boundary in the Gulf of Maine Area (U.S. v. Can.), 1982 I.C.J. 3 (Constitution of Chamber Order of Jan. 20), *reprinted in* 21 I.L.M. 69 (1982). Pursuant to article 31(4) of the I.C.J. Statute, Acting Judge Elias requested Judge Ruda to assent to his replacement by Canada's chosen judge *ad hoc*, Professor Maxwell Cohen.

20. 1981 SENATE REP., *supra* note 7, at 1385.

21. Special Agreement Between the Government of the United States and the Government of Canada to Submit to a Chamber of the International Court of Justice the Delimitation of the Maritime Boundary in the Gulf of Maine Area, Mar. 29, 1979, *reprinted in* 20 I.L.M. 1378 (1981) [hereinafter cited as Special Agreement].

parties within six months, then the Arbitration Agreement provided that the dispute would have immediately passed to an ad hoc Court of Arbitration.²²

The composition of the Chamber, which is provided for in article 1(2) of the Special Agreement, has been complied with by the recent election of five judges to hear the case. Article II of the Treaty itself provides that either party may terminate the Treaty if the Chamber has not been "constituted in accordance with the provisions of this Treaty and the Special Agreement" within six months of the Treaty's entry into force.²³ The purpose of these complex procedures becomes clear when examined in light of article I of the Treaty. There, the Chamber is "deemed to have been constituted when the Registrar of the Court has been notified of the name or names of the judge or judges ad hoc."²⁴ The parties, in effect, maintained a veto power regarding the composition of the Chamber by reserving a delaying tactic in the notification of the judges ad hoc. After six months had passed, the Special Agreement to submit the matter to the Chamber would have terminated, and it would immediately have gone to a Court of Arbitration whose members were to be "mutually agreed upon" by the parties.²⁵ However, in this case, this tactic is moot since the Court has already elected the Special Chamber of five judges, and an elected judge has already been replaced by an ad hoc judge at Canada's request.²⁶

Article III of the Treaty provides a further escape mechanism should the parties become displeased with the composition of the Chamber in the event of a vacancy. If the vacancy is not filled to the parties' satisfaction within four months time, either party may terminate the Special Agreement and effect the Arbitration Agreement within another two months time.²⁷ The Court is satisfied that this provision is consonant with the Statute of the Court since it "simply specifies the circumstances under which the parties may exercise their right to terminate the Special Agreement and, pursuant to article 88 of the Rules, to discontinue the proceedings before the Court."²⁸

The last two procedural issues which the Treaty addresses are those of the presentation of evidence and the matter of a final, binding judgment. Article V of the Special Agreement provides that diplomatic and

22. Agreement Between the Government of the United States and the Government of Canada to Submit to a Court of Arbitration the Delimitation of the Maritime Boundary in the Gulf of Maine Area, Mar. 29, 1979, reprinted in 20 I.L.M. 1380 (1981) [hereinafter cited as Arbitration Agreement].

23. Boundary Settlement Treaty, *supra* note 5, at 1377.

24. *Id.*

25. Arbitration Agreement, *supra* note 22, at 1380.

26. Delimitation of the Maritime Boundary in the Gulf of Maine Area (U.S. v. Can.), 1982 I.C.J. 3 (Constitution of Chamber Order of Jan. 20), reprinted in 21 I.L.M. 69, at 73 (1982).

27. Boundary Settlement Treaty, *supra* note 5, at 1377-78.

28. 21 I.L.M. 69, at 71.

confidential correspondence will not be introduced into evidence without notification, and proposals made in the course of negotiation will not be introduced into evidence at all. Article II of the Special Agreement accepts as final and binding the judgment of the Chamber regarding the single maritime boundary. There shall be no recourse to third party review.²⁹

The substantive legal questions and limitations which are at issue in this proceeding are addressed in the Special Agreement and in the Arbitration Agreement. Under both Agreements, article II directs the tribunal to decide "in accordance with the principles and rules of international law applicable in the matter between the Parties, the course of a single maritime boundary that divides the continental shelf and fisheries zones" of the two countries. The boundary shall proceed from a specified point to a point which shall be determined by the Chamber within a defined area seaward of Georges Bank.³⁰

Article III of the Special Agreement states that the division of the continental shelf and fishery zones of the parties is the only purpose for the maritime boundary. This boundary will not be recognized for any other purpose.³¹

Finally, although the Court has not been asked to delimit the boundary to its full seaward extent, article VII of the Special Agreement and article XIII of the Arbitration Agreement establish a procedure for negotiations on the seaward extension of the boundary following the tribunal's decision if that is desired by the parties. The question may be taken back to the tribunal for binding third-party adjudication if a negotiated settlement is not reached within one year.³²

Since the Court has accepted the Treaty as a legitimate vehicle to address the main issues of the dispute, and since it has elected members of the Chamber in accordance with the Treaty provisions, it is now obliged to analyze those issues "in accordance with the principles and rules of international law applicable in the matter as between the Parties."³³

To resolve the questions submitted to the Court, discriminating decisions must be made regarding which principles of international law shall govern the delimitation of a "single maritime" boundary. The maritime boundary will certainly encompass the delimitation of the continental shelf and the water column above, which includes the fisheries zone. Also, although neither state has made an express claim to an exclusive eco-

29. *Id.* at 72.

30. Special Agreement, *supra* note 21, at 1378; Arbitration Agreement, *supra* note 22, at 1380.

31. Special Agreement, *supra* note 21, at 1379.

32. *Id.*; Arbitration Agreement, *supra* note 22, at 1382.

33. Special Agreement, *supra* note 21, at 1378.

conomic zone,³⁴ it is clear that the line to be drawn would also be the boundary for any exclusive economic zone to be claimed in the future.³⁵ Indeed, some analysts insist that the boundary delimitation is one which primarily delimits the economic zone.³⁶

The dilemma lies in the fact that the parties have requested the Chamber to set a single maritime boundary according to the principles of international law for two separate purposes: the delimitation of fishery zones and of the continental shelf. Should the Court find that the rules of international law direct the delimitation of the fishery zones to result one way and the delimitation of the continental shelf to result in another, the Court will not be able to rely on precedent to determine which course of action it should adopt.

Article 6(2) of the Geneva Convention on the Continental Shelf³⁷ governs the delimitation of the continental shelf between adjacent states. However, its strict application may be inappropriate because it does not address the water column. There is no equivalent treaty to which Canada and the United States are parties which provides for the delimitation of boundaries in fishing zones.³⁸ Thus, the Court may wish to draw an analogy from the Third United Nations Conference on the Law of the Sea³⁹ and utilize the continental shelf rule for the delimitation of the fishery zone. However, in one instance the I.C.J. held article 6(2) of the Geneva Convention to be somewhat distinct from the international customary law which was previously held applicable to the delimitation of continental shelf boundaries.⁴⁰ It may be necessary to inquire as to the delimitation of fishing zone boundaries,⁴¹ and to take into account historic fisheries and similar considerations.

Because of the amount of significant legal authority and practice

34. For a general discussion of the Gulf of Maine maritime boundary delimitation and its application to exclusive economic zones, see Note, *Adjudication of the Maritime Boundary in the Gulf of Maine*, 17 CAN. Y.B. INT'L L. 292 (1979).

35. *Id.*

36. For a case in point, see Note, *Boundary Delimitation in the Economic Zone: The Gulf of Maine Dispute*, 30 ME. L. REV. 207 (1978).

37. Specifically, Article 6(2) states that:

[W]here the same continental shelf is adjacent to the territories of two adjacent states . . . unless another boundary line is justified by special circumstances, the boundary shall be determined by the application of the principle of equidistance from from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured.

Geneva Convention on the Continental Shelf, Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311.

38. Feldman & Colson, *The Maritime Boundaries of the United States*, 75 AM. J. INT'L L. 729 (1981).

39. See Draft Convention on the Law of the Sea, UN Doc. A/CONF.62/WP. 10/Rev.3, and Add.1 and Corrs. 16 (1980), reprinted in 19 I.L.M. 1131 (1980).

40. North Sea Continental Shelf (W.Ger. v. Den.; W.Ger. v. Neth.), 1969 I.C.J. 3 (Judgment of Feb. 20, 1969).

41. Fisheries Jurisdiction (U.K. v. Ice.), 1974 I.C.J. 2 (Judgment of July 25, 1974).

which exists with respect to the delimitation of continental shelf boundaries, it is likely that those rules and procedures of international law will be most fully utilized by the Court to fashion a resolution in the Gulf of Maine dispute.⁴² The precedents which the Court shall rely upon will be illuminating for those situations in which concave coastlines are involved in delimitation proceedings.⁴³ Furthermore, the Gulf of Maine decision will contribute direction and substance to an area of maritime delimitation law which, to date, has been sparsely developed.

In conclusion, the utilization of the I.C.J. Chamber for the adjudication of international disputes should attract the attention of parties in conflict who are in need of a more flexible process of decision making. The Gulf of Maine decision will be the first test of this procedural device which, hopefully, will lighten the cumbersome process of third-party adjudication. Finally, this case will provide the International Court of Justice an opportunity to develop and clarify the legal and equitable principles which are necessary for the delimitation of maritime boundaries.

Ellen K. Eggleston

The Convention on the Law of the Sea: Prospects for the Future

On April 30, 1982, the nations of the world witnessed the adoption of a new charter for the world's oceans by the United Nations Conference on the Law of the Sea (UNCLOS III). After eight weeks of informal negotia-

42. The *North Sea Continental Shelf* case, and the *Anglo-French Arbitration* proceeding, shall most likely be the predominant case law precedents which the Court shall rely upon to reach a decision. The *North Sea* decision emphasized the use of equitable procedures and the importance of the physical relationship of the land to the adjacent continental shelf, while the *Anglo-French Arbitration* stressed that equity is the primary issue in a delimitation proceeding, and that there is no priority given to the principle of equidistance as a means of boundary delimitation. Rather, the determination of whether a special circumstance exists for the purpose of achieving an equitable result depends upon "geographical and other circumstances." *Delimitation of the Continental Shelf (Fr. v. Gr. Brit.)*, Cmnd. 7434 (1978), reprinted in 18 I.L.M. 397 (1979).

43. Article 6(2) of the Geneva Convention addresses adjacent states and sets forth the principle of equidistance as the proper equitable solution to apply in maritime delimitation proceedings. However, the article is careful to distinguish between its application in regard to adjacent and opposite states. The difficulty which arises from distinguishing between the two situations is where the equidistance principle is applied to concave coastlines, as in the present case. Here, equidistance methods may not be equitable, and the presence of "special circumstances" in each case may be cause for an exception to the equidistance rule. Geneva Convention on the Continental Shelf, note 37 *supra*.