BASE POINTS AND BASELINES IN MARITIME BOUNDARY DELIMITATION

Captain J. Ashley Roach, JAGC, USN (retired)
Panel 5: Unresolved Boundaries in the Region
Maritime Border Diplomacy
Conrad Bali Resort and Hotel
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Preview

- Definitions
- Delimitation by Agreement
- Baseline Rules
- Maritime Boundary Situations and Rules
- Delimitation by Adjudication
- Boundary Making
- Sovereignty Disputes
- Requirements for Sovereignty
- Compulsory Dispute Resolution
Definitions

• “Baseline” is defined by the UN as “the line from which the seaward limits of a State’s territorial sea and certain other maritime zones of jurisdiction are measured.”

• “Base point” is defined by the UN as “any point on the baseline.”
Delimitation by Agreement

• Where delimitation is by agreement, base points and/or baselines have been used in maritime boundary agreements

• Only portions of a State’s baseline will affect an equidistance line. By definition, the equidistance line will be constructed by using only the salient (seaward-most) basepoints.

• The greater the distance, the fewer the basepoints that are likely to affect it, and the greater the distance that may be selected between points along a smooth coast.
Baseline Rules

• Normal baseline for measuring the breadth of the territorial sea is low-water line along the coast as marked on large-scale charts officially recognized by the coastal State

Article 5, LOS Convention

• Straight baselines may only be drawn in localities
  – where the coastline is deeply indented and cut into, or
  – If there is a fringe of islands along the coast in its immediate vicinity

Article 7, LOS Convention
ICJ on Straight Baselines

• Method of straight baselines is an exception to the normal rules for determination of baselines
• It may be applied only if the conditions are met
• Method of straight baselines must be applied restrictively

Qatar v. Bahrain, 2001 ICJ Rep., para. 212
“Land Dominates the Sea”

• Maritime rights derive from the coastal State’s sovereignty over land


• Islands, regardless of size, have same status and enjoy same maritime rights as other land territory

*Article 121(2)*, LOS Convention; *Qatar v. Bahrain*, 2001 ICJ Rep., para. 185
Islands

• A naturally formed area of land, surrounded by water which is above water at high tide is an island

Article 121(1), LOS Convention

• An island can be used as a base point for maritime delimitation

Qatar v. Bahrain, 2001 ICJ Rep., para. 195
Rocks

- Rocks are a subcategory of islands
- Rock is a feature that “cannot sustain human habitation or economic life of [its] own” and is not entitled to an EEZ or continental shelf
  Article 121(3), LOS Convention
- Rocks have a TS and can be used as base point for TS delimitation
- Rocks can’t be used as base point for maritime delimitation of EEZ/CS
- Only features admitted to be rocks
  - Rockall (UK)
  - Alijos Rocks (MX)
- Alleged to be rocks: Okinotorishima (JA), Aves Island (VE)
Low-Tide Elevation

• A naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide

Article 13(1), LOS Convention

• A low-tide elevation is not to be used as a base point in maritime delimitation

Qatar v. Bahrain, 2001 ICJ Rep., para. 209
Maritime Boundary Situations

• Maritime boundaries are needed when two States have overlapping maritime zones
  (1) where they have opposing coasts, and
  (2) where the coasts of the two States are adjacent to each other
• There are different rules for delimitation of the territorial sea and EEZ/continental shelf, including shelf beyond 200 nm
Territorial Sea Treaty Rule

• Neither State 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

LOS Convention, article 15, first sentence
Territorial Sea Rule Exception

• This rule does not apply “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.”

LOS Convention, article 15, second sentence

• These rules are different from the modern rules for delimitation of EEZ and continental shelf
Delimitation by Adjudication

• Distinguish the baseline for the purpose of measuring the breadth of the continental shelf and the EEZ from the issue of identifying base points for drawing an equidistance/median line for the purpose of delimiting the continental shelf and the exclusive economic zone between adjacent/opposite States

• They are two different issues

*Romania v. Ukraine, 2009 ICJ Rep., para. 137*
Basepoints for Delimitation by Adjudication

- The Court should not base itself solely on the choice of base points made by one of those Parties for its baseline from which the breadth of its territorial sea is measured.
- The Court must, when delimiting the continental shelf and exclusive economic zones, select base points by reference to the physical geography of the relevant coasts.

Romania v. Ukraine, 2009 ICJ Rep., para. 137
ICJ Jurisprudence - TS

• Three stages in territorial sea delimitation:
  – draw provisional median line
  – consider if there is historic title
  – consider if there are special circumstances
• Need to determine relevant coastlines and influencing points for calculating median line
• Special circumstances may exist where the equidistance principle may not be able to be applied

*Qatar v. Bahrain*, 2001 ICJ Rep., paras. 176, 280, 281
EEZ & CS Treaty Delimitation Rule

• The delimitation is to be effected by agreement on the basis of international law, as referred to in ICJ Statute article 38, in order to achieve an “equitable solution”

• Conciliation if not agreement within a reasonable time

LOS Convention, articles 74 and 83
ICJ Jurisprudence – EEZ/CS

• Three steps in EEZ/CS delimitation:
  – Draw provisional equidistance line based on “methods that are geometrically objective”
  – Make adjustments to reach an equitable solution, if needed
  – Verify provisional equidistance line, whether or not adjusted, does not lead to an inequitable result “by reason of any marked disparity between ratio of respective coastal lengths and the ratio between relevant maritime area of each State”

*Romania v. Ukraine*, 2009 ICJ Rep., paras. 116-122
Sketch-map No. 6: Construction of the provisional equidistance line

Mercator Projection (45°32' N)

WGS 84

This sketch-map, on which the coasts are presented in simplified form, has been prepared for illustrative purposes only.
Archipelagic States

• No special rule for maritime delimitation by archipelagic States with other States
• Archipelagic States are subject to the same norms of maritime delimitation set forth in other parts of LOS Convention and general international law

Dissenting opinion Judge ad hoc Torres Bernárdez, Qatar v. Bahrain, 2001 ICJ Rep. 280, para. 56
Boundary Making

• Boundaries may not be imposed unilaterally
  – by force; prohibited by UN Charter, article 2(4)
  – by making unilateral claims

• Delimitation is to be effected by agreement
  – Article 15; paragraph 1, articles 74 and 83

• After agreement in force, questions to be determined iaw the agreement
  – Articles 74 and 83, paragraph 4
  – Anderson, V IMB 3221
Sovereignty and Equality of States

- Coasts are evaluated by same rules
- Where coasts are dissimilar, e.g., coastal lengths or configurations in relevant area, coasts should be evaluated base point by base point
- Like areas should be treated as like => equitable solution

Anderson, V IMB 3221
Sovereignty Disputes

• Base points can be selected only when sovereignty over the land or insular feature is not in dispute

• There many sovereignty disputes over islands, not just in the Southeast Asia region, with consequent undelimited maritime boundaries
<table>
<thead>
<tr>
<th>Disputed Islands</th>
<th>Claimants</th>
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<td><strong>North America</strong></td>
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<td>Hans Island</td>
<td>Canada – Denmark</td>
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<td>Machias Seal Island &amp; North Rock</td>
<td>Canada – United States</td>
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<td><strong>Atlantic Ocean</strong></td>
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<td>Corisco Bay Islands</td>
<td>Equatorial Guinea – Gabon</td>
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<td>Falkland Islands/Isle Malvinas, South Georgia &amp; South Sandwich Islands</td>
<td>Argentina – United Kingdom</td>
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<td><strong>Caribbean</strong></td>
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<td>Sapodilla Cayes</td>
<td>Belize – Honduras</td>
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<td>Navassa Island</td>
<td>Haiti – United States</td>
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<td>Quita Sueña, Roncador and Serrana</td>
<td>Colombia – Nicaragua</td>
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<td><strong>Mediterranean</strong></td>
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<td>Ceuta &amp; Melilla and associated islands</td>
<td>Morocco – Spain</td>
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<td><strong>Aegean</strong></td>
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<td>Imia/Kardak islets</td>
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<td>Pacific Ocean</td>
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<td>Matthew and Hunter Islands</td>
<td>France – Vanuatu</td>
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<td>Wake Island</td>
<td>United States – Marshall Islands</td>
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<td>Kuril Islands/Northern Territories</td>
<td>Japan – Russia</td>
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<th>Sea of Japan</th>
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<td>Liancourt Rocks/Dok Do/Takeshima</td>
<td>Japan – South Korea</td>
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<th>East China Sea</th>
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<td>China – Japan – Taiwan</td>
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<th>South China Sea</th>
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<td>Paracel Islands</td>
<td>China – Vietnam</td>
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<td>Spratly Islands</td>
<td>Brunei – China – Malaysia – Philippines – Taiwan – Vietnam</td>
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<th>Singapore Strait</th>
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<td>South Ledge</td>
<td>Malaysia – Singapore</td>
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<td><strong>Indian Ocean</strong></td>
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<td>Bassas de India, Europa Island, Glorioso Islands, Juan de Nova Island</td>
<td>France – Madagascar</td>
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<td>Tromelin Island</td>
<td>France – Mauritius</td>
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<td>Diego Garcia &amp; Chagos Archipelago</td>
<td>Mauritius – United Kingdom</td>
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<td>Mayotte Island</td>
<td>Comoros – France</td>
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<td>South Talpatty/New Moore Island</td>
<td>Bangladesh – India</td>
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<th><strong>Persian Gulf</strong></th>
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<td>Abu Musa, Greater &amp; Lesser Tunb Islands</td>
<td>Iran – UAE</td>
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Requirements for Sovereignty

• Intentional display of power and authority over the territory
• By exercise of jurisdiction and state functions
• On a continuous and peaceful basis
• Latter two criteria tempered to suit nature of the territory and size of its population (if any)

*Eritrea v. Yemen* arbitration award, 1969, para. 239
Subsidiary Rules

• Major subsidiary rules summarized next
  – Critical dates
  – Burden of proof
  – Military occupation
  – Maps

Critical Dates

• “cannot take into consideration acts having taken place after the date on which the dispute between the Parties crystallized unless such acts are a normal continuation of prior acts and are not undertaken for the purpose of improving the legal position of the Party which relies on them”

Burden of Proof

• a party which advances a point of fact in support of its claim must establish that fact
  – ICJ Pedra Branca/Pulau Batu Puteh judgment

• must attain the same degree of certainty as in any other case that the claim of the party appearing is sound in law, and, so far as the nature of the case permits, that the facts on which it is based are supported by convincing evidence
Military Occupation

• Today cannot achieve sovereignty by military occupation

• Prior to 1918, it could
  – *Eritrea v. Yemen*, para. 147
Evidentiary Value of Maps

• maps merely constitute information which varies in accuracy from case to case; of themselves, and by virtue solely of their existence, they cannot constitute a territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights

Boundary Dispute Resolution

• Following States party to LOS Convention have opted out of compulsory dispute resolution for disputes concerning interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations:

• Angola, Argentina, Australia, Canada, Chile, China, Equatorial Guinea, France, Gabon, Ghana, Italy, Mexico, Norway, Palau, Portugal, Republic of Korea, Russia, Slovenia, Spain, Thailand, Trinidad and Tobago, Tunisia and Ukraine