

# UNITED STATES V. CANADA

A Case Summary for the  
Maritime Dispute Resolution Project



U.S.-ASIA LAW INSTITUTE  
NEW YORK UNIVERSITY SCHOOL OF LAW

Maritime Dispute Resolution Project

Delimitation of the Maritime Boundary in  
the Gulf of Maine Area  
*(United States v. Canada)*

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A research project of the  
U.S.-Asia Law Institute

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## Project Overview

This case summary was prepared as part of the U.S.-Asia Law Institute's Maritime Dispute Resolution Project. The institute began the project in 2018 in order to better understand the circumstances in which interstate maritime disputes are successfully resolved and distill lessons for governments.

The two main questions the project seeks to answer are:

- When are international institutional dispute resolution mechanisms effective in resolving maritime disputes?
- What insights can be applied to the maritime disputes in East Asia?

To address these questions, leading international lawyers and legal scholars held workshops to analyze selected disputes from around the world. This and other case studies were prepared for the workshops and are based on the official records.

Citation:

Delimitation of the Maritime Boundary in the Gulf of Maine Area, Canada v United States, Merits, Judgment, [1984] ICJ Rep 246, ICGJ 121 (ICJ 1984), 12th October 1984, International Court of Justice [ICJ]

### **Section I – Background and Summary of the Case**

This case was a dispute between the United States and Canada concerning the maritime boundary in the Gulf of Maine area. A dispute concerning the location of the maritime boundary between the two States emerged as claims to extended maritime zones came to be recognized in the law of the sea. In the 1960s, it became apparent that the two sides held different views on the delimitation of the continental shelf. In addition, the establishment of 200 nautical mile fisheries zones by the United States and Canada in 1977 resulted in an area of overlapping claims to the water column. The disputed area included Georges Bank, an important fishing ground for both United States and Canada. The parties failed to reach agreement on the maritime boundary despite extensive negotiations, and eventually agreed to submit the dispute to binding dispute settlement.

In 1981, the United States and Canada requested a Chamber of the International Court of Justice (ICJ) to decide “the course of the single maritime boundary that divides the continental shelf and fisheries zones of Canada and the United States” in the Gulf of Maine area.<sup>1</sup>

The Chamber rendered its judgment on 12 October 1984, dividing the contested area between the parties. The delimited maritime boundary cut across Georges Bank, giving approximately one-sixth to Canada and the rest to the United States. In the proceedings, the

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<sup>1</sup>Special Agreement between the Government of Canada and the Government of the United States of America to Submit to a Chamber of the International Court of Justice the Delimitation of the Maritime Boundary in the Gulf of Maine Area, 1288 UNTS 38 (Article II(1)).

parties presented a variety of factors as relevant to the delimitation. However, the Chamber based its judgment on geographic considerations.

The maritime boundary was implemented shortly after the judgement. Further agreements on law enforcement and cross-boundary cooperation in the field of fisheries have been concluded between the parties.

### **Section II – Summary of the Key Procedural Steps**

The parties first held negotiations concerning the continental shelf limits in 1970.<sup>2</sup> In the anticipation of the establishment of their fisheries zones, further negotiations were conducted in 1975-76.<sup>3</sup> In 1977, special negotiators were appointed to negotiate a comprehensive agreement concerning (a) maritime boundaries delimitation, (b) complementary fishery and hydrocarbon resource arrangements as appropriate, and (c) other related matters.<sup>4</sup>

As a result of the negotiations, the parties agreed on a set of two interlinked treaties in 1979. One was a fisheries agreement which would establish a coordinated fisheries management and allocation mechanism between the United States and Canada for fisheries on

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<sup>2</sup> *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, ICJ Reports 1984*, p. 281 (para. 65).

<sup>3</sup> Mark B. Feldman and David Colson, “The Maritime Boundary of the United States,” *American Journal of International Law*, Vol. 75(4) (1981), p. 755.

<sup>4</sup> L. Scott Parsons, *Management of Fisheries in Canada* (NRC Research Press, 1993), p. 322.

the Atlantic coast.<sup>5</sup> The other treaty provided the details on submitting the dispute on the maritime boundary to binding dispute settlement.<sup>6</sup> However, the fisheries agreement was unfavorably received by the fishing industry in the United States, and could not obtain approval from the United States Congress.<sup>7</sup> The treaties were later delinked, and only the agreement to submit the dispute to binding dispute settlement was later ratified.

The parties agreed to submit the dispute to a Chamber of the ICJ rather than to the full Court. The explanation given by the then-Legal Advisor of the State Department is that “the Chamber procedure had the advantage of utilizing the institutional significance and established facilities of the International Court of Justice, while seeking convenience and innovation in presenting the case to a limited number of specially qualified jurists.”<sup>8</sup> The parties requested specific judges to serve in the Chamber, and the ICJ

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<sup>5</sup> Agreement between the Government of the United States of America and the Government of Canada on East Coast Fishery Resources. For the text of the agreement, see United States Department of State, *Draft Environmental Impact Statement on the Agreement Between the United States and Canada on East Coast Fishery Resources*, Appendices, Appendix I.

<sup>6</sup> Treaty to Submit to Binding Dispute Settlement the Delimitation of the Maritime Boundary in the Gulf of Maine Area, 1288 UNTS 27.

<sup>7</sup> Ted L. McDorman, *Salt Water Neighbors: International Ocean Law Relations Between the United States and Canada* (Oxford University Press, 2009), pp. 138-139. For a discussion of the factors contributing to the failure of the agreement, see David L. VanderZwaag, *The Fish Feud: The U.S. and Canadian Boundary Dispute* (Lexington Books, 1983). pp. 90-92.

<sup>8</sup> Davis R. Robinson et al., “Some Perspectives on Adjudicating before the World Court: The Gulf of Maine Case,” *American Journal of International Law*, Vol. 79 (1985), p. 582.

elected members of the Chamber according to the request.<sup>9</sup> However, some concerns were raised about the influence of the parties on the composition of the Chamber.<sup>10</sup>

### **Section III – Summary of Key Substantive Issues**

#### **1. Position of the Parties**

The line claimed by Canada was based on equidistance, which was later adjusted to reduce the effect of islands and protruding features on the Massachusetts coast. The Canadian line ran across Georges Bank, allocating more than one-third of the bank to Canada. In the proceedings before the Chamber, Canada justified its claim based on adjacency and proximity as legal sources of the title of the coastal State to its maritime zones.<sup>11</sup> Canada argued, based on the general configuration of the coasts and the continuity of the continental shelf in the area, that applying the equidistance method would produce an equitable result.<sup>12</sup> It also argued that the interests of coastal States in fisheries resources constitute relevant circumstances, and that economic dependence associated with

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<sup>9</sup> *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Constitution of Chamber, Order of 20 January 1982, ICJ Reports 1982*, p. 11 (Declaration of Judge Oda).

<sup>10</sup> *Ibid.*, p. 12 (Dissenting Opinion of Judge Morozov); pp. 13-14 (Dissenting Opinion of Judge El-Khani).

<sup>11</sup> Memorial of Canada, *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area, Pleadings, Oral Arguments, Documents*, Vol. I, pp. 123-124 (paras. 297-299).

<sup>12</sup> *Ibid.*, pp. 126-128 (paras. 303-310), 150-151 (paras. 376-379).



established fishing patterns must be given special weight.<sup>13</sup> Canada further maintained that the conduct of United States constituted acquiescence, or created an estoppel in favor of Canada.<sup>14</sup>

On the other hand, the United States took the position that the boundary should be the Northeast Channel, which separates Georges Bank from Browns Bank. This line had the effect of placing Georges Bank entirely within United States jurisdiction. In its Memorial, the United States put forward a new line pushing the boundary further northeast to its advantage. This was a line “perpendicular to the general direction of the coast adjusted to take account of the relevant circumstances in the area.”<sup>15</sup> The United States justified its claim based on the grounds that the line (a) respects the geographical relationship between the coasts of the parties and the relevant maritime areas, by avoiding encroachment on the seaward extension of the coastal front and giving effect to the proportionality between of the lengths of the coast of the parties to delimited maritime areas;<sup>16</sup> (b) facilitates conservation and management of the marine living resources in the area by recognizing the “natural boundary” for fish stocks;<sup>17</sup> (c) minimizes the potential for disputes;<sup>18</sup> and (d) takes into account relevant

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<sup>13</sup> *Ibid.*, pp. 128-131 (paras. 311-319).

<sup>14</sup> *Ibid.*, pp. 153-173 (paras. 385-427).

<sup>15</sup> Memorial of the United States of America, *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area, Pleadings, Oral Arguments, Documents*, Vol. II, pp. 115-116 (paras. 301-304).

<sup>16</sup> *Ibid.*, pp. 117-119 (paras. 305-315).

<sup>17</sup> *Ibid.*, pp. 120-121 (paras. 316-319).

<sup>18</sup> *Ibid.*, pp. 121-122 (paras. 320-324).

circumstances in the area, such as the irregularities in the coastal line and the historic and present interests of United States.<sup>19</sup>

### 2. Decision of the Chamber

The Chamber reviewed the rules of international law on maritime delimitation and held that “delimitation is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other circumstances, an equitable result.”<sup>20</sup> The Chamber did not accept that it was required to apply a particular criteria or method. In this connection, the Chamber denied the application of the equidistance-special circumstances rule in Article 6 of the Convention on the Continental Shelf to the superjacent fisheries zone,<sup>21</sup> and also dismissed Canada’s arguments that the equidistance method must be adopted on the basis of acquiescence or estoppel.<sup>22</sup>

The Chamber considered the criteria and methods as advanced by each of the Parties, and concluded that neither was appropriate.<sup>23</sup> It then proceeded to formulate its own solutions based on equitable criteria and methods it considered appropriate. The Chamber emphasized that the applicable criteria must be equally suitable to the division of the continental shelf and the superjacent waters, and

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<sup>19</sup> *Ibid.*, 122-123 (paras. 325-331).

<sup>20</sup> *Gulf of Maine*, *supra* note 2, pp. 299-300 (para. 112).

<sup>21</sup> *Ibid.*, pp. 300-303 (paras. 115-125).

<sup>22</sup> *Ibid.*, pp. 303-312 (paras. 126-154).

<sup>23</sup> *Ibid.*, pp. 316 -325 (paras. 164- 189).

expressed its preference for criteria derived from geography.<sup>24</sup> It took the view that “equal division of overlapping maritime projections” should be considered the basic criterion, subject to adjustments through the application of auxiliary criteria such as giving weight to disparities in coastal lengths, avoidance of cut-offs and giving partial effects to islands.<sup>25</sup>

Turning to the methods to be applied, the Chamber considered that the geographical configuration of the Gulf of Maine required it to delimit the waters within the gulf in two segments.<sup>26</sup> The coasts of the United States and Canada in the northeastern sector of the gulf was regarded as adjacent, whereas in the waters near the closing line of the gulf it was regarded as opposite. In the first segment, the Chamber did not see any special circumstances and applied its basic criterion of equal division of the area of overlapping maritime projections.<sup>27</sup> Mainly because the starting point of the delimitation was a point agreed by the parties and not based on equidistance, the Chamber implemented the criterion by drawing lines perpendicular to the coastlines and adopting the bisector of the angle formed by the two perpendiculars as the first segment of the maritime boundary. In the second segment, the Chamber considered it appropriate to draw an equidistance line between the opposite coasts, which ran almost in parallel to each other.<sup>28</sup> However, the Chamber saw the need to adjust the line, due to the

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<sup>24</sup> *Ibid.*, pp. 326-327 (paras. 192-195).

<sup>25</sup> *Ibid.*, pp. 327-328 (paras. 195-196).

<sup>26</sup> *Ibid.*, pp. 330-331 (paras. 205-208).

<sup>27</sup> *Ibid.*, pp. 331-332 (para. 209).

<sup>28</sup> *Ibid.*, pp. 333-334 (para. 216).

differences in the lengths of the two States, and the disproportionate effect of Seal Island on the maritime boundary.<sup>29</sup> This resulted in a corrected median line reflecting a 1.32 to 1 ratio in favor of the United States. The second segment extended from its intersection with the first segment line to where it reached the closing line of the gulf. For a third segment delimiting the waters outside the closing line of the gulf, the Chamber adopted a line perpendicular to the closing line.<sup>30</sup> The third segment was drawn starting from the intersection of the second segment with the closing line to the limits of the 200 nautical mile zone.

Having delimited the maritime boundary, the last section of the judgment considered whether the boundary was “inherently equitable” in light of all the circumstances of the case.<sup>31</sup> In this regard, the third segment received attention because it traversed Georges Bank, which was understood to be the “real subject of the dispute.” In conclusion, the Chamber did not consider fishing, or any other kind of activities as relevant to delimitation. However, it indicated the possibility that such considerations may be taken into account where the line was “radically inequitable” in the sense that it was “likely to entail catastrophic repercussions.”<sup>32</sup>

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<sup>29</sup> *Ibid.*, pp. 334-337 (paras. 217-223).

<sup>30</sup> *Ibid.*, pp. 337-338 (paras. 224-225).

<sup>31</sup> *Ibid.*, pp. 339-344 (paras. 230-241).

<sup>32</sup> *Ibid.*, p. 342 (para. 237).

## Section IV – Implementation of the Tribunal’s Decision

The parties had agreed through the special agreement to accept the decision of the Chamber as final and binding (Article II(4)).<sup>33</sup> The special agreement also included a substantive provision stating that both sides shall not “claim or exercise sovereign rights or jurisdiction for any purpose over the waters or seabed and subsoil” on the other side of the boundary to be determined by the Chamber (Article III(1)). No further agreements were required to implement the judgment. The boundary began to be enforced on 26 October 1984, after a 14-day grace period to allow fishing vessels to return to their sides of the new boundary.<sup>34</sup>

Having hoped to gain access to the entire Georges Bank, it is generally believed that the fisheries sector in the United States were more dissatisfied than their counterparts in Canada.<sup>35</sup> There were some political moves representing U.S. fishing interests which called for a one-year moratorium on the implementation of the decision.<sup>36</sup> Such efforts, however, did not lead to any results.

After some incidents involving fishing vessels in the late 1980s, the United States and Canada entered into an agreement on fisheries

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<sup>33</sup> Special Agreement, *supra* note 1.

<sup>34</sup> “Eastern U.S.-Canada Boundary Line Drawn by World Court,” *Marine Fisheries Review*, Vol. 46(4), p.81.

<sup>35</sup> Jan Schneider, “The Gulf of Maine Case: The Nature of an Equitable Result,” *American Journal of International Law*, Vol. 79(3) (1985), pp. 540-541.

<sup>36</sup> McDorman, *supra* note 7, pp. 148-149; Parsons, *supra* note 4, p. 333.

enforcement in 1990.<sup>37</sup> This agreement includes a provision reaffirming the commitment of the parties to ensure full respect for their maritime boundaries. Since the late 1990s, mechanisms for cross-boundary cooperation on fisheries management have been established.<sup>38</sup>

### Section V – Conclusions

The willingness of the parties to submit their disputes to third-party dispute settlement and to comply with the decision resulted in the successful resolution of a protracted dispute. Several factors can be identified as contributing to the decision of the parties to refer the case to an international court.

Firstly, both the United States and Canada had a strong desire to resolve the dispute. In light of the importance of the fisheries to the coastal communities of the area, both States considered it urgently necessary to establish a stable legal framework concerning access to the resources of the disputed area. As it became clear that the matter could not be resolved through negotiations, resolving the dispute through litigation became a more favorable option than leaving it unresolved.

Secondly, both sides needed a solution with which they could persuade their domestic stakeholders, since the outcome of the dispute would have significant consequences for them. In the case

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<sup>37</sup> Agreement between the Government of United States of America and the Government of Canada on Fisheries Enforcement, 30 ILM 419 (1991).

<sup>38</sup> See generally, Emily J. Pudden and David L. VanderZwaag, “Canada-USA Bilateral Fisheries Management in the Gulf of Maine: Under the Radar Screen,” *Review of European, Comparative and International Environmental Law*, Vol. 16(1) (2007), pp. 36-44.

of the United States, opposition to the East Coast Fisheries Agreement already indicated that it would be highly difficult to satisfy domestic stakeholders with a solution based on compromise. By referring the dispute to an international court, both governments were able to appeal to the public that the outcome was fair, or even to blame the international court for an inevitably unfavorable outcome.<sup>39</sup>

Thirdly, both the United States and Canada apparently believed in the strength of their positions. While it is obvious that States would be more willing to submit a dispute to an international court in the likelihood of a favorable outcome, less obvious are the circumstances that lead both States to believe that they have a better case. In this case, uncertainties in the law concerning maritime delimitation at the time of the dispute may, ironically, have contributed to the referral of the case to an international court.

Fourthly and lastly, the availability of the *ad hoc* Chambers procedure was a factor that contributed to the willingness of the parties to bring the case to the ICJ. The parties believed that the composition of the court would affect the perceived fairness of the outcome, and considered it important to select a small group of qualified experts.

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<sup>39</sup> Robin Churchill, “The General Dispute Settlement System of the UN Convention on the Law of the Sea: Overview, Context, and Use,” *Ocean Development and International Law*, Vol. 48 (3-4) (2017), p. 226.



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