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TREATY ON DELIMITATION OF THE CONTINENTAL SHELF BETWEEN MEXICO AND THE UNITED STATES OF AMERICA OF JUNE 9, 2000

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CONTENTS

I. INTRODUCTION

It can be said about the problems regarding the delimitation of maritime zones, from a purely technical point of view, that they were problems really simple to solve in most cases.

The width of the territorial waters were only a few miles; the baselines that served as their measurement generally followed the configuration of the coasts.

Delimitations today imply great distances, whose aim is no longer solely being a border of 3 or 12 nautical miles, but great extensions covered by the exclusive economic zones and by continental or island shelves.

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All and any of the negotiations, whether bilateral or multilateral, present a unique set of problems, among the following: the multiple differences in the configuration of the line of the coast, the presence of islands, rocks or elevations that emerge at sea, the morphology of the seabed, the distribution of living and non-living resources, etc.

The general rules on delimitation between two or more States are still originating through a gradual process of formation, due mainly to the work of international jurisprudence. Although there are more and more cases submitted to arbitration and the international judiciary; however, as Tullo Scovazzi has said, it does not seem that a corpus has been formed so consistently as to consent to the individualization of sufficiently precise and consolidated general rules in international practice.

On the other hand, it is indisputable that the right of delimitation of the Continental Shelf has been considered as the prototype of the right of any maritime delimitation, although it is not obvious at first sight that the delimitation of the territorial sea, the platform and the exclusive economic zone must follow the same principles and rules of law, since because of their same subject matter they are applied to jurisdictions of diverse juridical nature.

Since 1969, the court has considered that the non-applicability of the conventional provisions of 1958 was not equivalent to an absence of legal rules, and since then both judicial decisions and arbitral decisions have not ceased to insist on the obligation imposed on the international judge to settle disputes on the basis of law, not conferring him/her the power to decide, in any manner whatsoever, an ex aequo et bono litigation.

Little by little, and through the succession of cases submitted to international jurisprudence, it can be argued that the judge can no longer fulfill his/her mission, simply stating that a delimitation path is the right one because he/she simply considers it equitable. It is also necessary that the international judge be able to justify the delimitation line in light of equitable principles of normative content.

As a result, one of the serious problems presented by the law of maritime delimitation is to find that necessary balance between a certain degree of generality that should be covered by any legal rule, but in close conjunction with the criterion of equity, taking into account not to bring equity to illogical positions of an extreme individualization of the rule of law itself, which obviously, if this were the case, it would lose all connotation of normative rule.

II. COMMON DENOMINATOR TO THE MARITIME DELIMITATION

The common denominator applicable to any maritime delimitation —and on which there seems to be no greater discussion in international jurisprudence— is that according to it the delimitation must be made by using practical methods and by applying "equitable principles" that are suitable for ensuring an equitable

result, taking into account the geographical configuration of the region and other "relevant circumstances" to the specific case.[1]

Thus, in the Case of the Delimitation of the Maritime Border in the Gulf of Maine Region, the International Court of Justice stated that no maritime delimitation between States whose coasts are adjacent or face-to-face could not be affected unilaterally by one or the other the States. This delimitation must be made through an agreement, the result of a negotiation carried out in good faith and with the genuine intention of being able to reach a positive result.

In the event that an agreement cannot be reached, la delimitation must be made by resorting to a third instance endowed with the necessary competence for this purpose: "Dans le premier cas, comme dans le second, la délimitation doit être réalisée pour l'application des critères équitables et par l'utilisation de méthodes pratiques aptes à assurer, compte tenu de la configuration géographique de la région et des autres circonstances pertinentes de l'espèce, un résultat équitable".[2]

We must state very clearly that the "equitable principles", also sometimes called equitable criteria or factors (Arbitration, Guinea vs. Guinea Bissau 1982) are not mere rhetoric, but true legal maxims, which together with the so-called "relevant circumstances", integrate an inseparable duality.

It is evident that the "equitable principles" —as the jurisprudence has shown— which can be taken into consideration for an international maritime delimitation, cannot be systematically and theoretically defined, due to their highly variable adaptability to very different and specific situations.

In the Case of the Delimitation of the Maritime Border in the Gulf of Maine Region, between Canada and the United States of America, the International Court of Justice stated that they could be remembered as "equitable criteria", expressed in the classic formula that the land dominates the sea; the principle of no overlap between areas of the Continental Shelf; the one concerning avoiding, as muchas possible, an effect of amputation of the maritime projection of the coast of one of the States in question.[3]

[1] See Gómez-Robledo, Alonso, "Métodos de delimitación en derecho internacional del mar y problema de las islas", en varios autores, *Los espacios marítimos y su delimitación*, México, Secretaría de Energía, 1999, pp. 135-218.

[2] See ICJ, "Arrêt du 12 octobre 1984 rendu pour la Chambre constituée par Ordonnance de la Cour du 20 Janvier 1982", *Recueil des Arrêts, Avis Consultatifs et Ordonnances*, p. 299 and 300, paragraph 112. The cases of the Continental Shelf in the North Sea continue to be of exceptional value for the understanding of the legal nature of the Continental Shelf and its delimitation. In its judgment of February 20, 1969, the court stated that the delimitation should be operated via an agreement, in accordance with equitable principles and taking into account all relevant circumstances, to attribute, to the maximum extent possible, to each party all the areas of the Continental Shelf that constitute the natural prolongation of its territory under the sea, and in such a way that there will not be an overlap over the natural prolongation of the territory of a third party; see "Affaires du Plateau Continental de la Mer du Nord" (RFA/Denmark; RFA/Pays-Bas), ICJ, *Recueil des Arrêts, Avis Consultatifs et Ordonnances*, 1969, p. 53, paragraph 101. See the illustrative analysis on the delimitation method based on the "equidistance" of the Mexican judge Padilla Nervo, Luis, "Separate Opinion of Judge Padilla Nervo", *op. cit.*, p. 86-99.

[3] See ICJ, *Recueil des Arrêts, Avis Consultatifs et Ordonnances*, 1984, p. 312 and 313, paragraph 157.

In an effort of greater clarification, the International Court of Justice, in the case of the Continental Shelf between Libya and Malta of 1985, will specify that the normative nature of the "equitable principles" applied in the framework of general international law are important, by virtue of the fact that these principles govern not only the delimitation by judicial means or by arbitration, but also and primarily, because they impose the obligation on the parties to seek, first of all, a delimitation by means of an agreement, which implies also to look for an equitable result.

The court will then enunciate, as an example, several principles, considered as "equitable principles" in the jurisprudence and susceptible in addition to a general application:

a) The principle according to which, at no time would it be a question of completely remaking geography or rectifying the inequalities of nature.

b) The neighbor principle of non-overlap of one part over the natural prolongation of the other; and that is nothing but the negative expression of the positive rule, according to which the coastal State enjoys sovereign rights over the shelf bordering its coasts to the full extent authorized by international law, in accordance with the relevant circumstances.

c) The respect due to all and any of said pertinent or relevant circumstances.

d) The principle according to which, even though all States are equal to each other according to law and can claim equal treatment, equity does not necessarily imply equality,[4] nor does it point to turn into equal, what nature has made unequal.

e) The principle according to which at no time it would be a kind of distributive justice.[5]

Theoretically, "equitable principles" and "relevant circumstances" are placed on different planes, as Professor Prosper Weil has pointed out. The concept of relevant circumstances refers to gross facts, such as the concavity of a coast, the presence of an island, the difference between the extension of the coastal facades.

On the other hand, the concept of equitable principles implies a judgment on said elements of fact, and a certain vision regarding the objective pursued in a delimitation.

However, in reality, as the most serious doctrine states, relevant circumstances and equitable principles integrate, as we said before, an inseparable duality.

[4] ICJ, *Reports*, 1969, p. 49, paragraph 91.

[5] See ICJ, "Affaire du Plateau Continental, Jamahiriya Árabe Lybyenne/Malte", Arrêt du 3 juin 1985, *Recueil des Arrêts, Avis Consultatifs et Ordonnances*, pp. 39 and 40, paragraph 46.

Without the help of equitable principles, it would be impossible for the relevant circumstances to generate an appreciation of equality.

In fact, then, the equitable principles, as P. Weil points out, are shaped by reference to the relevant circumstances of the case, and the relevant circumstances of the concrete case, do not become operational except with the help and in the context of the equitable principles.[6]

III. DEFINITION OF THE CONTINENTAL SHELF

The United Nations Convention on the Law of the Sea, signed in Montego Bay, Jamaica, on December 10, 1982, and in force from November 16, 1994, that is, 12 months after depositing the sixtieth instrument of ratification (Guyana), sets out in its Article 76 the following:

> The Continental Shelf of a coastal State includes the bed and subsoil of the underwater areas that extend beyond its territorial sea and throughout the natural extension of its territory and until the outer edge of the continental margin, or up to a distance of 200 nautical miles from the baselines from which the width of the territorial sea is measured, in cases where the outer edge of the continental margin does not reach that distance (Article 76, paragraph 1).

In almost all the regions of the world, the bottom of the sea descends gradually from the coast, into a great extension, even before it is interrupted by a very sharp descent, through a steep slope that leads to the oceanic chasms, or abyssal funds (see drawing on the next page).

This area of the seabed that is a type of cornice that borders more or less in an accentuated manner the islands and continents, has been called Continental or coastal shelf, and insular plain.

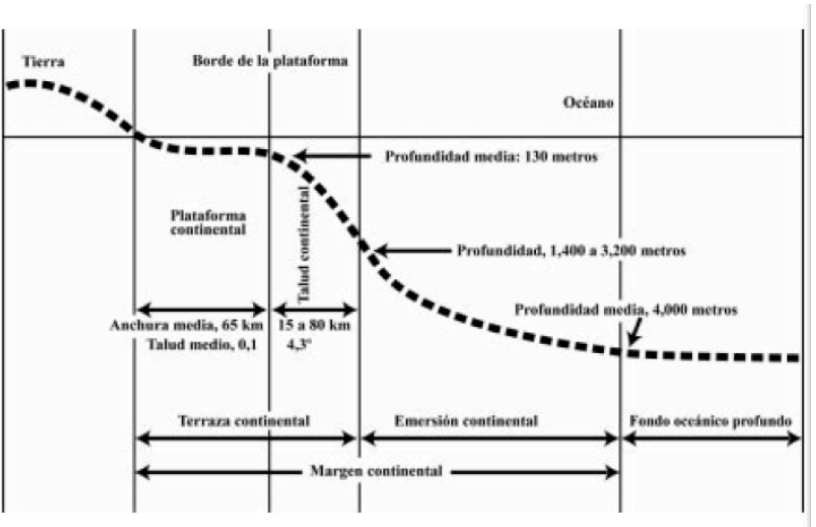
The extension of the Continental Shelf is very variable, since in some regions it has a relatively insignificant extension (South America Western Coast), while in other regions it reaches an extension of 800 or more miles (Bering Sea).

The rights of the coastal State over its Continental Shelf are sovereign, exclusive and unconditional, in the following sense: If the State does not occupy or exploit its platform, no other State may undertake such exploitation, without its express consent.

[6] See (1) Weil, Prosper, "A propos du droit coutumier en matière de delimitation maritime", in different authors, *Études en l'Honneur de Roberto Ago : Le Droit International à l'heure de sa codification*, Milán, Giuffrè, 1987, vol. II, pp. 535-552. (2) Id., "L'équité dans la jurisprudence de la Cour Internationale de Justice", in different authors, *Essays in Honour of Sir Robert Jennings: Fifty years of the Internationale Court of Justice,* Cambridge University Press, 1996, pp. 121-144. The principle of "no overlapping", for example, do not have a more accurate meaning but in relation to concrete geographical circumstances that lead to the equidistance line, to approach, in greater or lesser extent to the coast of each of the parties. See Jimenez de Aréchaga, Eduardo, "The conception of equity on maritime delimitation ", in several authors, *Études en l'Honneur de Roberto Ago..., cit.*, in this same quote, vol. II, pp. 228-239.

The International Court of Justice, in its famous judgment of 1969 in the cases of the North Sea, will speak of rights of the coastal State, generated ipso facto and ab initio.[7]

One of the biggest problems in the state practice is precisely that where the coastal State has a Continental Shelf that exceeds 200 nautical miles, since the Montego Bay Convention (MBC) sets out, in these cases, complex provisions and of a great technicality.



SOURCE: *Continental Shelf definition,* Division of Ocean Affairs and the Law of the Sea, New York, United Nations, 1994.

In accordance with the Convention of 1982, wherever the margin extends beyond 200 nautical miles, the coastal State will establish the outer edge of the continental margin by a line drawn in relation to the most distant fixed points in each of which the thickness of sedimentary rocks be at least 1% of the shortest distance between this point and the bottom of the continental slope. Or a line drawn, in relation to fixed points located no more than 60 nautical miles from the bottom of the continental slope.

The fixed points that constitute the outer boundary line of the Continental Shelf on the seabed "should be located at a distance not exceeding 350 nautical miles from the baselines from which the width of the territorial sea is measured, or 100 nautical miles from the 2,500-meter isobath, which is a line that connects depths of 2,500 meters" (Article 76, paragraph 4, subsection a); paragraph 5 and paragraph 7 of the MBC).

[7] See Gómez-Robledo V., Alonso, *El nuevo derecho del mar: guía introductiva a la Convención de Montego Bay*, México, Miguel Ángel Porrúa, 1986, pp. 71-78.

It is true then that the provisions of the Convention of 1982 adopt a hybrid and complex formula, which may well be perceived as a true amalgam of all the main types of criteria that had been proposed. But this is just the consequence of the harsh negotiations to which the negotiation technique gave rise in a "package" and the need to achieve at all costs a consensus, running the risk of endangering the Convention in its entirety.[8]

IV. DELIMITATION IN STATE PRACTICE AND INTERNATIONAL JURISPRUDENCE

1. In the 1975 Arbitration on the delimitation of the Continental Shelf in the Iroise Sea

The parties (England and France) asked the court to decide pursuant to international law applicable to the matter, the following question: What should be the layout of the line or lines, delimiting the areas of the Continental Shelf that corresponded respectively to the United Kingdom, as well as the Anglo-Norman Islands and the French Republic, to the west of the length 30 minutes west to the Meridian of Greenwich and up the 1000-meter isobath?

The importance of this arbitration was indisputable, since, as Professor W. Bowett said, it represented the first delimitation operation of continental shelves carried out by an international court. In the cases of the Continental Shelf in the North Sea of 1969, the court had only been asked to determine the principles and rules applicable to the delimitation.

In this Arbitration, the court ruled without hesitation about the application of the rule "equidistance-special circumstances", as part of customary international law, and this is clearly expressed in the delimitation made in the Canal area, as well as in the one of the Atlantic.[9]

2. In the Case of the delimitation of the Continental Shelf between Tunisia and Libya (1982)

The parties requested the International Court of Justice that in the delimitation operation it took into account the equitable principles, the circumstances of the

[8] See Castañeda, Jorge, "The Conférence des Nations Unies sur le Droit de la Mer et l'Avenir de la Diplomatie Multilaterale", in several authors, *Etudes en l'Honneur de Roberto Ago*, *cit.*, Note 6, pp. 74-85. The president of the delegation of Mexico to the III Confemar, the jurist Mr. Jorge Castañeda and the Norwegian Ambassador H. Vindennes, gathered a set of representative delegations from all points of view to discuss the difficult problem related to the nature of the EEZ awnd the settlement of disputes applicable to fisheries and scientific research. This group had a decisive influence on the work of the third commission and the informal plenary, as well as those of the second commission.

[9] See "Affair of the Délimitation du Plateau Continental entre Royaune-Uni de Grande Bretagne and d'Irlande du Nord' et République Française", *Recueil des Sentences Arbitrales*, vol. XVIII, Nations Unies, p. 130, 270. The critical analysis of this arbitration can be consulted in Gómez-Robledo V., Alonso, *Jurisprudencia internacional en materia de delimitación marítima*, México, UNAM-IIJ, 1989, pp. 65-93.

region itself that were relevant, and the new trends on the law of the sea, as they emerged from the III Confemar.

The following passage of the case is, undoubtedly, of great importance for the jurisprudence of the court:

> The application of equitable principles must achieve an equitable result. This way of expression, even when it is generally used, cannot be completely satisfactory, since the equitable adjective is qualifying both the result that one tends to achieve, and the means by which it is intended to reach that end. However, it is the result what is important: the principles are subordinated to the objective to be achieved... All principles cannot be in themselves equitable; it is the equity of the solution, the one that will confer such characteristic...[10]

In the opinion of the court, the radical change of orientation of the Tunisian coast would seem to modify to some extent, but not completely, the relationship between Libya and Tunisia, which, being frontier States at first, tend to become States with coasts located one opposite to the other.

This leads to a situation in which the drawing of a line of equidistance becomes a factor that weighs more than it would normally do, with respect to the global appreciation of equity considerations.

In its ruling of February 24, 1982, adopted by 10 votes in favor and four against, the International Court of Justice will reiterate that the delimitation should be carried out in accordance with equitable principles and relevant circumstances, and that the region that should be taken into consideration for purposes of delimitation consisted in a single Continental Shelf, natural extension of the land territory of the two parties.[11]

3. Case of the delimitation of the maritime boundary in the Gulf of Maine region

The Canadian government and the USA government agreed upon via a commitment to submit their delimitation dispute on the Continental Shelf and fishing zone, jointly and by drawing a single line, before a court room of the International Court of Justice, intermediate point between the mandatory jurisdiction and the arbitration. This mechanism seems to contribute to greater confidence on the part of the States in submitting their disputes to the international judiciary.

The court room will proceed to divide the area to be limited into three sectors. In the first one, the court room uses a geometric method, based on respect for the

[10] See "Affaire du Plateau Continental-Tunisie/Jamahiriya Árabe Libyenne", Arrêt du 24 février 1982, *Recueil des Arrêts, Avis Consultatifs et Ordonnances*, p. 59, paragraph 70. The 1985 judgment decided on the claim, submitted by Tunisia, for review and interpretation of the first judgment. IJC, *Recueil des Arrêts...*, 1985, p. 192.

[11] See *ibidem*, p. 92, paragraph 133. The following judges voted against the judgment of the court: Andre Gros, Shigeru Oda, Forester and the *ad hoc* judge Jens Evensen. For a critical analysis of the case, see: Gómez-Robledo V., Alonso, *Jurisprudencia internacional..., cit.*, note 9, pp. 95-128.

geographical situation of the coasts, and it is, in fact, the use of a line of equidistance in a simplified form, since each point of the bisector is at the same distance from both straight lines from the point of the angle chosen.

With regard to the second segment, the court room would proceed through two stages. Provisionally, it would establish a basic delimitation, and then it would take into consideration the necessary corrective measures in view of the "special circumstances" of the specific case. Here, and even more than in the first segment, and although the court room does not say so, the equidistance method is used, exactly in the sector where the Canadian and North American coasts are one opposite to the other.

Regarding the third sector of the delimitation line, and given the fact that the delimitation line had to be drawn in the middle of the ocean, the court room considered, once again, that the only practical method that could be taken into consideration was a "geometric method", and that in the specific case, it consisted in the drawing of a perpendicular line in relation to the line of the closure of the Gulf of Maine.[12]

4. Case of the Continental Shelf between the Republic of Malta and the Arab Republic of Libya of 1985

The International Court of Justice, after analyzing the principles and circumstances pertinent to the case, makes a preliminary layout, by means of a center line between the coasts of Malta and Libya, to then correct it according to the circumstances that it has considered as being relevant, especially the length of the coasts, the distance that separates them and the situation of Malta in the context of the Mediterranean.[13]

5. Case of the Maritime Delimitation in the Region between Greenland and Jan Mayen between Denmark and Norway (1993)

The International Court of Justice would conclude that the line of equidistance drawn up on a provisional basis, and used as a starting point for the delimitation

[12] See IJC, "Affaire de la délimitation de la frontière maritime dans le région du Golfe du Maine", Arrêt du 12 octobre 1984, *Recueil des Arrêts, Avis Consultatifs et Ordonnances*, Canada/Etats-Unis d'Amérique, 1984. In the third segment, the equidistance method is again used and it is sufficient to see carefully the maps attached to the judgment of the court room of 1984, to check how the line drawn in this third segment is the continuation of the established line for the second segment. As has been noted by the doctrine, if the operation of the delimitation begins necessarily by equidistance, this does not imply that it necessarily must end with the same method. At this point, once this line is drawn as a first step for the delimitation, it should be established whether the equidistance method is convenient since it is a means to perform a "fair" and "equitable" delimitation, *Judgment of 1977 on the Iroise Sea*, paragraph 242. For a critical analysis of the Gulf of Maine Case, see: Gómez-Robledo V., Alonso, *Jurisprudencia Internacional...*, *cit*., note 9, pp. 131-172.

[13] See IJC, Arrêt du 3 juin 1985, *Recueil des Arrêts...*, *cit*., note 5, pp. 1-187. See Gómez-Robledo, Alonso, *Jurisprudencia internacional...*, *cit*., note 8, pp. 175-204.

of the Continental Shelf and the fishing zones, should be corrected or displaced by virtue of the disparity of the length of the littorals of the States in question.[14]

6. The practice of States regarding maritime delimitation ratifies a large part of international jurisprudence

Thus, in the Agreement executed in Rome on January 8, 1968, between Italy and Yugoslavia, the equidistance method characterizes a large part of the delimitation line of the Continental Shelf. A reduced effect was attributed to four islands located in the central part of the Adriatic.[15]

In the Agreement on the Delimitation of the Continental Shelf between Greece and Italy, executed in Athens, on May 24, 1977, the Equidistance method, although with some adjustments, was chosen. These corrections refer mainly to the Greek islands of Fanos (to which an effect similar to 3/4 was attributed) and Strofades, to which a semi-effect was attributed.[16]

In the Agreement on the Delimitation of the Continental Shelf, executed between Italy and Spain on February 10, 1974, in the city of Madrid, and effective as of February 16, 1978, in the same manner as in the previous cases, it was expressly stipulated that the delimitation line would be established applying the Equidistance Method from the respective baselines (Article 1).

Here the delimitation line stops before touching the equidistant points between France-Italy-Spain and Algeria-Italy-Spain.[17]

After endless and laborious negotiations within the III Confemar, the formula of the delimitation of the Continental Shelf was finally achieved in its Article 83, with its equivalent for the delimitation in the exclusive economic zone in its Article 74: "The delimitation of the Continental Shelf between States with adjacent coasts or placed one opposite to the other, will be made by agreement between them on the basis of international law, referred to in Article 38 of the Statute of the International Court of Justice, in order to reach an equitable solution" (Article 83, paragraph 1). Although the previous formulation is not very happy from the legal point of view; however, it has an incontrovertible political advantage, since it opened the doors for an agreement between radical positions, and thus it allowed the adoption of the entire text of the Montego Bay Convention of 1982.

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[14] See IJC, "Affaire de la délimitation maritime dans la région située entre le Groenland et Jan Mayen", Arrêt du 14 juin, *Recueil des Arrêts, Avis Consultatifs et Ordonnances* (Danemark c. Norvège), 1993. Specifically, see pp. 77-82, paragraphs 87-94.

[15] See text of the Agreement between Italy and Yugoslavia on January 8, 1968, in force since January 21, 1970, in Conforti, Benedeto and Francalanci, Gianapiero, *Atlante dei Confini Sottomarini*, Milan, Dott. A. Giuffrè Editore, 1979, pp. 85-87.

[16] See text of the Agreement between Greece and Italy of May 24, 1977, *ibidem*, pp. 89-91.

[17] See text of the Delimitation Agreement between Spain and Italy, *ibidem*, pp. 75-77.

The emphasis is on the result and in principle any method of delimitation can be applied. Unlike the Conventions of Geneva of 1958 on the Law of the Sea, under the current scheme, there are no specific nor less binding rules for the delimitation between States.

However, the international jurisprudence and the state practice demonstrate —as we already saw— that most delimitation agreements take as a criterion-base, as a starting point, a line drawn according to the method of equidistance, to proceed then to make the necessary adjustments and relevant corrections, depending on relevant, particular or special circumstances; configuration of the coasts, width of the facade, length between them, presence of islands, etc.[18]

V. DELIMITATION OF THE CONTINENTAL SHELF BETWEEN MEXICO AND THE UNITED STATES OF AMERICA

The government of the United Mexican States and the government of the United States of America executed on June 9, two thousand a Treaty on the Delimitation of the Continental Shelf in the Western Region of the Gulf of Mexico beyond 200 nautical miles, having been executed in Washington, D.C., on June 9, 2000, and being effective as of the change in the instruments of ratification on January 17, 2001.[19]

The maritime boundaries between the parties were determined on the basis of the "Equidistance" method, for a distance between twelve and two hundred nautical miles offshore, from baselines from which the width of the territorial sea in the Gulf of Mexico and the Pacific Ocean, in accordance with the Maritime Boundary Treaty between Mexico and the United States of America, signed on May 4, 1978.

Likewise, the maritime boundaries between the parties were determined based on the "Equidistance" line for a distance of 12 nautical miles offshore, from baselines from which the width of the Territorial Sea is measured, pursuant to the Treaty to Resolve Pending Border Differences and to Maintain the Bravo and Colorado rivers, as the International Border between Mexico and the United States of America, executed on November 23, 1970.

In this treaty of June 9, two thousand, the parties established, according to international law, the limit of the Continental Shelf between Mexico and the Uni-

[18] On several occasions, States use the terminology of the "center line" for delimitations between States whose coasts are placed one opposite to the other, and of the "equidistance line" for States with adjacent coasts. But, in both cases, these are lines drawn according to the method of equidistance, method that produces, as the court says in its judgment of February 20, 1969, a line that attributes to each one of the interested parties, all the portions of the Continental shelf closer to one point of its coast, than of any other point located on the coast of the other party, see Caflisch, Lucius, "Les zones maritimes sous juridiction nationale, leurs limites et leur délimitation", in Bardonnet, D and Virally, M. *Le nouveau droit international de la mer*, Paris, Editions A. Pédone, 1983, pp. 34-116.

[19] See Treaty Enactment Decree. Federal Official Gazette. Thursday March 22, 2001.

ted States of America, in the Western region of the Gulf of Mexico, beyond the 200 nautical miles from the baselines from which the width of the Territorial Sea is measured.

This treaty was even more important, if the possibility —not to say the certainty— that there could be substantial deposits of oil or natural gas across the boundary of the Continental Shelf was taken into consideration, and that under such circumstances, the cooperation and periodical consultation with the aim of protecting the respective interests between the parties were necessary.

Mexico and the United States of America are party to the Convention of Geneva of 1958 on Continental Shelf, and such is understood as the seabed and subsoil of the underwater areas adjacent to the coasts, but located outside the territorial sea zone to a depth of 200 meters, or beyond this limit, to where the depth of the overlying waters allows the exploitation of natural resources of the platform.

In the Convention of 1982 on the Law of the Sea, to which Mexico is a party, and with respect to which the United States of America has accepted that in this section the Convention of 1982 reflects the customary international law, the definition established provides for a better scientific definition of the Continental Shelf, as we had the opportunity to examine it previously.

Do not forget that with regard to areas beyond 200 nautical miles, from the baselines, both the Convention of Geneva of 1958 and the Montego Bay Convention of 1982 stipulated a series of precise criteria so that the Continental Shelf can be qualified as such (see above).

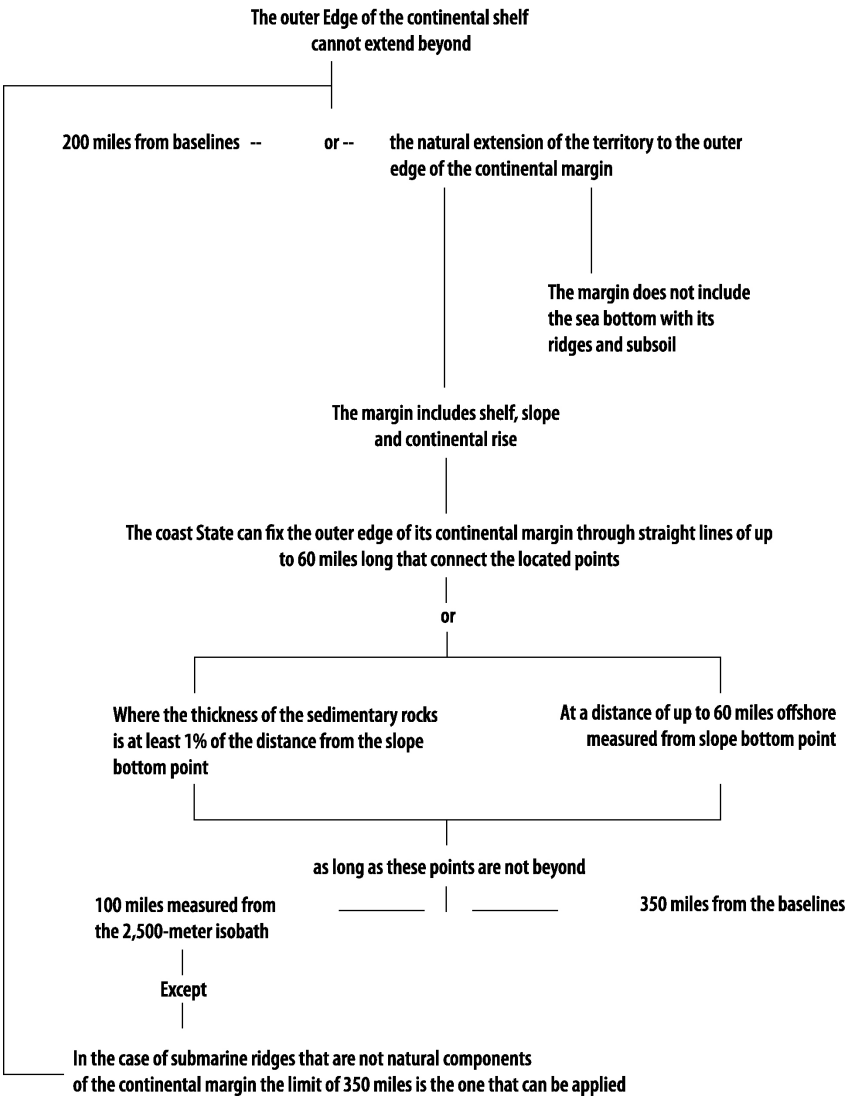
During the treaty negotiations, both Mexico and the United States of America agreed upon the fact that both the soil and the subsoil of underwater areas beyond the 200-nautical mile limit of the Exclusive Economy Area in the Western region of the Gulf of Mexico, brought together the requirements demanded by both conventions.

The "limit" of the Continental Shelf is described in Article I of the treaty between Mexico and the United States of America in the Western region of the Gulf of Mexico beyond 200 nautical miles, being determined this boundary by geodesic lines, which connect with a list of 16 coordinates as terminal points (see diagram on the next page).

In accordance with the methodology used in previous delimitation treaties between the two countries, the current line represents an "equidistant line" drawn from the respective baselines of Mexico and the United States of America, including the baselines of the islands.

For the determination of the established limit, the geodesic bases and the computation of the North American Datum of 1983, and the International Terrestrial Reference Frame ("ITRF 92") of the International Earth Rotation Service were used.

DIAGRAM OF ARTICLE 76



SOURCE: Rebagliati, O. R., *La Plataforma Continental y su Límite Exterior,* Buenos Aires, 1985, pp. 137 and 138.

The above was necessary to ensure that the treaty could be applied uniformly and meticulously by Mexico and the United States of America, respectively.

Article III establishes —by agreement between the parties— that Mexico, to the north of the limit of the Continental Shelf (set out in Article I), and the United

States of America, to the south of that limit, will not claim nor will they exercise sovereign rights or jurisdiction for any purpose on the seabed and the subsoil.

In addition to what was previously established, the treaty contains a new set of precepts contained in Articles IV and V, and which refer to the possible existence of oil or natural gas deposits through the limit established for the Continental Shelf.

Among other things, these precepts create a legal framework (we hope not utopian) by which the parties must exchange information to help determine the possible existence of "transboundary deposits".

The parties have undertaken (Article IV) that during a moratorium of 10 years, they will not authorize or permit drilling or exploration of oil or natural gas on the Continental Shelf within a nautical mile, four tenths (1.4) on each side of the boundary or limit settled down.

Based on these same terms, within this "area" of two nautical miles, eight tenths (2.8), the moratorium does not apply to other activities of the Continental Shelf.

This means that each party has the right to authorize or allow exploration and/or exploitation of oil outside the "area" within the Western Region.

It is also set out that the parties may modify, if so agree, the moratorium of 10 years, through an exchange of diplomatic "notes". This provision allows the parties to shorten or extend the duration of the moratorium, if they deemed it appropriate.

Another important provision, in relation to the area, is that related to the fact that if a party is aware of the existence or of the possible existence of a transboundary deposit, it must notify so to the other party (Article IV (6)).

As geological and geophysical information that facilitates the knowledge of the parties about the existence of transboundary deposits, including the notifications of the parties about the possible existence of them (including the sixth paragraph of the Article IV) is generated, the parties must meet periodically in order to identify, locate and determine the geological and geophysical characteristics of said deposits.

Any dispute concerning the interpretation or application of the treaty in question, must be resolved by negotiation or by other peaceful means that the parties agree upon.

The Treaty on Maritime Boundaries between the United Mexican States and the United States of America executed on May 4, 1978, and in force since November 13, 1997, had not made the delimitation of the Western and Eastern polygons (Western and Eastern Doughnut Hole), so that the present treaty of June 9, 2000 was necessary for that purpose.

The total area of the "Western polygon" (Western gap) is approximately 17,467 square kilometers. The delimitation path divides the Western polygon of the Continental Shelf, in such a way that United States of America is awarded 6,526 square

kilometers, that is say 38% of the total, while Mexico is awarded an area of 10,905 square kilometers, that is 62% of the total area bounded.

The Maritime Boundaries Treaty between Mexico and the United States of America on May 4, 1978, and approved by the Mexican Senate on December 20 of the same year, slept the sleep of the just until the USA Senate agreed to approve it in October of 1997, and the instruments of ratification were exchanged on November 13 of the same year.

The incredible lapse of almost 20 years that the United States of America let pass to finally approve and ratify the treaty of May 4, 1978, is explained, simply, because the extraordinarily powerful North American oil guild —headed by the geologist Hollis Hedberg— was adamantly opposed to its approval, that it was argued that such a treaty was contrary to the interests of the United States of America, because it left Mexico with an important sector of the Center of the Gulf of Mexico that contained enormous potential for extraction of hydrocarbons and other minerals.[20]

The United States of America significantly amended the federal laws that govern its payment and patent system relating to the "offshore" production of gas and hydrocarbons, in such a way that they made decrease those economic obstacles that had paralyzed the extraordinary technological advances.

As a result of the adoption of these reforms, and in particular of the: "Outer Continental Shelf Deep Water Royality Relief Act" (43.U.S.C.1337 (a)), adopted in 1995, the North American oil companies undertook a great exploration program, seeing now production costs substantially reduced.

All this made that it was necessary for the United States of America to want to approve and ratify the Boundary Treaty of 1978 that had been approved and ratified by Mexico a long time ago.

The most powerful oil associations in the United States of America, like the American Petroleum Institute; The International Association of Drilling Contractors; The Domestic Petroleum Council and others, urged and pressed now the North American Congress, for the ratification of the treaty of 1978, and for the execution of a treaty for the Delimitation of the Continental Shelf beyond 200 miles in the Gulf of Mexico.

Now it was imperative to have secure borders, and accurate maritime delimitations, for the instrumentation of the numerous North American projects of

[20] See Dillard, Hammetl, "Deep water Drilling-Foresight, Risk and Reward", 22. *Exploration and Economics of the Petroleum Industry*, USA, 1984, pp. 227-231.

exploration and exploitation of hydrocarbon, gas and other mineral deposits in the Gulf of Mexico.[21]

VI. CONCLUSION

It is true that the precision formulated by the Montego Bay Convention of 1982, in the sense that the delimitation agreement must be achieved on the basis of international law referred to in Article 38 of the Statute of the International Court of Justice – International Conventions and Treaties; International Customary Rules; General Principles of Law; and Judicial Decisions and Qualified Doctrine, as auxiliary means does not really seem to make a particularly significant contribution to the topic in question.

Even, it must be said, for a large part of the doctrine, the indication of the equitable solution appears as equally unsatisfactory, "not being clear how an agreement, which is presupposed that was freely agreed upon by the parties, may contain an unfair solution... The theory of the equitable solution represented a happy file, prepared by the international courts "(Professor Tullio Scovazzi).

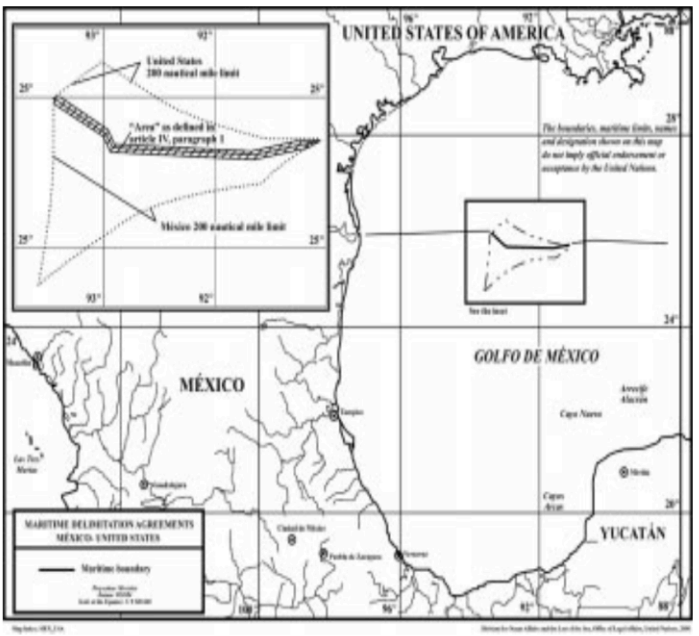
It is not an exaggeration to affirm that the jurisprudence regarding maritime delimitation has taken the role of conventions and custom, in the sense that jurisprudence in this area appears as a direct and primary source, and not subsidiary or auxiliary.

However, we must not forget that a large part of the jurisprudence in these areas has tried to reconcile the respect for territorial sovereignty of States, with certain elementary imperatives of justice, and in this sense the search for normative equity certainly appeared as the best corrective to one or several rules with very much rigid and inflexible components.

And, finally, it is true, as several judges have pointed out (N. Valticos), that States that have executed bilateral delimitation treaties on Continental Shelves probably did not have the feeling of following a mandatory rule of law nor were they clearly inspired for an *opinio iuris*.

Notwithstanding the foregoing, the States have executed such treaties or agreements, in light of all relevant legal rules and information; and thinking always that the method of the center line, or equidistance line, was the most convenient delimitation system because of its inherent qualities, such as the relative ease with which it can be applied, and the mathematical determination that allows, before any negotiation, the unilateral fixation of a provisional line.

[21] See "Hearings on Maritime Boundaries Treaty with Mexico before the Senate Committee on Foreign Relations", 105th. *Congress*, 1s. Session, 1997 (Testimony of Frank Murkowski: Chairman of the Senate Committee on Energy and Natural Resources).



SOURCE: *Law of the Sea,* Bulletin number 44, New York, United Nations, 2001, p. 75.